



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, १० अप्रैल, १९९३/२० चैत्र, १९१५

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-१७१००२, २ मार्च, १९९३

संख्या ३-३/९३-ई० एल० एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या ८२/हि० प्र० लो०स०/१/९१, दिनांक १५ जनवरी, १९९३ तदनुसार २५ फीस, १९१४ (शक्), जिसमें हिमाचल प्रदेश उच्च न्यायालय की निर्वाचन अर्जी संख्या १ अफ १९९१ पर निर्णय है, सर्वसाधारण की सूचना हेतु प्रकाशित करता हूँ।

आदेश से,
हस्ताक्षरित/-
सचिव।

भारत निर्वाचन आयोग

निर्वाचन सदन,
अशोक रोड,
नई दिल्ली-110001.

15 जनवरी, 1993
दिनांक _____
25 पौष, 1914 (शक्)

अधिसूचना

संख्या 82/हि० प्र०-लो० स०/1/91.—लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1991 की निर्वाचन अर्जी सं० 1 में शिमला स्थित हिमाचल प्रदेश के उच्च न्यायालय के तारीख 11-12-92 के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश में,
घनश्याम खोहर,
सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

Nirvachan Sadan.
Ashok Road,
New Delhi-110001

Dated the 15th January, 1993

25th Pausa, 1914 (Saka)

NOTIFICATION

No. 82/HP-HP/1/91.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgement dated the 11th December, 1992 of the High Court of Himachal Pradesh, Shimla in Election Petition No. 1 of 1991.

By order,

Sd/-
(GHANSHYAM KHOHAR),
Secretary.
Election Commission of India.

Copy of Order/Judgement/Statement/passed/delivered/recorded on 11-12-1992 by the Hon'ble Mr. Justice Devinder Gupta, J. in letter Petition No. 1/41 titled:—

Shri Narian Chand Prashar, son of Shri Nandu Ram, Village & Post Office Sera, Tehsil Nadaun, District Hamirpur, Himachal Pradesh .. Petitioner.

Versus

1. Shri Prem Kumar Dhumal S/o Shri Mahant Ram, Village & P. O. Shamirpur, Tehsil Bhoranj, District Hamirpur, Himachal Pradesh .. Returned Candidate.

2. Shri Gian Chand Paniala S/o Shri Narpal Ram, village Paniala, P. O. Kyah, Tehsil and District Hamirpur, Himachal Pradesh.
3. Shri Madho Ram S/o Shri Sodagar Ram, Village Chamola, P. O. Chauri, Sub-Tehsil Sujampur, District Hamirpur, Himachal Pradesh.
4. Shri Gopi Chand Attri S/o Hari Singh, Village Bhator, P. O. Uhal, Tehsil and District Hamirpur, Himachal Pradesh.
5. Hony. Sub. Maj. Kishore Chand Rana S/o Shri Narain Singh, Village & P. O. Karnat, Tehsil Bhoraanj, District Hamirpur, Himachal Pradesh.
6. Shri Anand Ram Sewal S/o Shri Daulat Ram Sewal, c/o M. L. Prashar, Opp. Vety. Hospital, Amb, District Una, Himachal Pradesh.
7. Shri Rattan Singh Dhadwal S/o Shri Sawan Singh, Village Har, P. O. Pragpur, Tehsil Dehra, District Kangra, Himachal Pradesh.
8. Shri Hukam Singh Agiakari S/o Shri Teja Singh, Village & P. O. Kuthera Jaswan, District Una, Himachal Pradesh.
9. Shri Krishan Dev Patiyal, S/o Shri Tulsji Ram, Village Ghanal Kalan, P. O., Tehsil & District Hamirpur, Himachal Pradesh.
10. Shri Pradeep Lakhanpal S/o Shri Lehar Nath, village & P. O. Harotta, Tehsil Nadaun, District Hamirpur, Himachal Pradesh.
11. Shri Kedar Nath Sharma S/o Shri Bansi Lal, Village Kaloh, P. O. Gagra, Tehsil Amb, District Una, Himachal Pradesh.
12. Shri Madhu Inder Shukla S/o Shri Murli Manohar Lal Village Jalgrat, P. O. Tappa, District Una, Himachal Pradesh.
13. Shri Shankar Singh Chandel, S/o Shri Arjun Singh, Village Barsand, P. O. Gehrwin, Tehsil Ghumarwin, District Bilaspur, Himachal Pradesh.
14. Shri Ranjit Singh S/o Shri Kanshi Ram, Village & P. O. Hatli, Tehsil Bangana, District Una, Himachal Pradesh.
15. Shri Sajinder Singh Sopohiya S/o Shri Roshan Lal, Village Bhalwal, P. O. Dadasiba, Tehsil Dehra, District Kangra.
16. Vaid Kashmir Singh Parmar S/o Shri Bal Singh, Village & P. O. Nanaon, Tehsil Palampur, District Kangra, Himachal Pradesh. .. Respondents.

CGPY OF ORDER JUDGEMENT/STATEMENT

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171 001.

Election Petition No. 1 of 1991.

11th December, 1992.

Narain Chand Prashar

.. Petitioner.

Versus

Prem Kumar Dhumal and others

.. Respondents.

Coram :

The Hon'ble Mr. Justice Devinder Gupta, Judge.

Whether approved for reporting ?

Yes

For the Appellant (s)/Petitioner (s) M/s Inder Singh and Pt. Om Parkash.

For the Respondent (s) M/s S. P. Jain and R. K. Sharma for respondent No. 1
None for the other respondents.*Devinder Gupta, Judge :*

The election of respondent No. 1, the returned candidate from Hamirpur Parliamentary constituency is under challenge in this Election Petition. Nominations for filing papers to the Lok Sabha from 4-Hamirpur Parliamentary constituency commenced on 20th April 1991. Last date for the same was 26th April 1991 and the dates for scrutiny and withdrawal were 27th and 29th April, 1991, respectively. The polling was held on 20th May 1991. Counting of votes could not commence on 26th May 1991, due to the assassination of Mr. Rajiv Gandhi and was deferred to 16th June 1991. The counting commenced on 16th June, 1991 at Hamirpur, Una, Bilaspur and Dehra simultaneously. The result was declared on 17th June, 1991. Respondent No. 1 secured 2,05,970 votes as against the petitioner, who secured 2,02,232 votes. Respondent No. 1 was declared duly elected having won the election with a margin of 3738 votes. Respondents No. 2 to 16 were the other candidates who contested the election.

The election is sought to be set aside on various grounds, namely :

- (a) improper acceptance of nomination of respondent No. 7, (b) corrupt practices having been committed by the returned candidate, his election agent and by other persons, with the consent of returned candidate and his election agent ; (c) the improper reception and rejection of votes ; and (d) violation of rules made under the Representation of Peoples Act, 1951 (hereinafter called as 'the Act').

The corrupt practices alleged are :

- (a) bribery, (b) undue influence ; (c) appeal on the ground of religion and caste ; (d) promotion of feelings of hatred between different classes of citizens on the ground of religion and caste ; (e) hiring and procuring of vehicles for conveyance of voters and obtaining, procuring and attempting to procure the assistance from persons in Government service.

Besides seeking to set aside the election of respondent No. 1, the petitioner has sought a further declaration that but for the votes obtained by the returned candidate by corrupt practices and the wrongful acceptance and rejection of votes, the petitioner would have secured the majority of votes and as such he be declared duly elected.

The petition is being contested by the returned candidate, who filed his reply and took a number of preliminary legal objections viz; (a) the Election Petition as well as the affidavit have not been verified in accordance with law ; (b) petition lacks material facts and particulars and discloses no cause of action, (c) non-production of tape-recorded cassette and non-supply of its copy to the respondents ; (d) non-attestation of the copy of Election Petition supplied to the respondents in accordance with law ; and (e) the petition having vague and imaginary allegations. On the basis of the preliminary objections, it is pleaded that the Election Petition is liable to be dismissed. Respondents 2 to 16 have not filed any reply. Respondents 2, 3 and 6 to 16 were proceeded against *ex-parte* and respondents 4 and 5 are represented by their respective counsel.

On 10th April, 1992, the following preliminary issues were framed :

1. Whether the petition as well as the affidavit in support thereof have not been verified in accordance with law. If so, its effect ?

2. Whether the averments made in para 12 of the petition are liable to be struck down for the reasons mentioned in preliminary objection No. 2 ? OPR 1
3. Whether the petition does not disclose any cause of action and is liable to be dismissed for the non-compliance of the provisions of Sections 83 and 86 of the Representation of the Peoples Act, 1951 ? OPR 1
4. What is the effect of the non production of tape recorded cassette recording the alleged speech of Sadhvi Ritambra and the non-supply of its copy to respondent No. 1 (wrongly mentioned as petitioner in the order dated 10th April 1992) at this stage of the proceedings ? OPR 1
5. Whether the copy of the petition supplied to respondent No. 1 has not been attested in accordance with law. If so, its effect ? OPR 1

The parties were called upon to adduce evidence. Prem Kumar Dhumal, the returned candidate examined himself as RW 1. The petitioner in rebuttal to this evidence examined himself as P. W. 1 and produced Jai Singh, a Senior Clerk of this Court as P. W. 2. Two copies of the Election Petition Ex. P-1, and EX. R-1 have been proved on record. Learned counsel for the parties were heard on 5th June, 26th June, 16th July, 17th July, 23rd July, 24th July and 29th July, 1992. I have gone through the record.

The findings on different issues are as follows;—

Issue No. 5:

In para 6 of the reply, respondent No. 1 has pleaded that the copy supplied to him has not been attested to be a true copy of the petition. It is stated that it is a photo-copy of some other copy, which was attested to be a true copy of the petition and as such the petition is liable to be dismissed summarily because of the violation of Section 81 (3) of the Act. The petitioner in rejoinder pleaded that the copy supplied to respondent No. 1 has been duly and properly attested and there is no violation of any of the provisions of law.

Ex. R-1 is the copy of the petition which, according to respondent No. 1, was served upon him along with the summons attached to it. While under cross-examination he denied the suggestion that each page of the copy, Ex. R-1, bears an impression of rubber stamp captioned 'attested to be a true copy of the petition' and also denied that each page bears the signature of the petitioner above and below the word 'petitioner' and that the signatures above the word 'petitioner' are the photostat signatures and below are the signatures of the petitioner in ink. According to the witness, both the signatures are the photostat signatures.

The petitioner, while appearing as PW 1, clarified that the Election Petition was presented by him personally before the Registrar of the Court and the same was accompanied with 32 spare copies, which were duly attested by him by putting signatures on each page. One of such copies, meant to be served and was received back in the Registry, was proved by this witness as Ex. P-1. According to him, both Exs P-1 and R-1 were the copies which he had supplied in the Registry for being served upon the respondents. During cross-examination, he further clarified that Exs. P-1 and R-1 are the photo copies. On each page there is photo impression of rubber stamp captioned 'attested to be a true copy of the petition' with word 'petitioner' below it. Signatures above the word 'petitioner' is the photocopy impression of his signatures but the signatures below the word 'petitioner' on each page of the copy Exs. P-1 and R-1 are his own signatures in ink. These signatures according to P. W. 1 had been appended by him with an intention to attest each copy of the petition with all its annexures to be a true copy of the Election Petition.

P. W. 2 Jay Singh, dealing with the original side cases, including the Election Petitions, stated that 32 copies of the petition were received along with 16 Registered A. D. covers, one of which had been received back with unserved summons Ex. P-2, which copy was Ex. P-1.

Every Election Petition, by virtue of Section 81 (3) of the Act is required to be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy is further required to be attested by the petitioner under his own signature, to be a true copy of the petition. An Election Petition, which does not comply with the provisions of Section 81 of the Act, is liable to be dismissed, as provided under sub-section (1) of Section 86. The question requiring consideration is whether there is any non-compliance of sub-section (3) of Section 81 of the Act and whether copy Ex. R-1, which admittedly has been served upon respondent No. 1, has in fact been attested by the petitioner under his own signatures to be a true copy of the petition.

The petitioner asserted in his statement that signature on each page of the petition and annexures below the word 'petitioner' which is also below the endorsement 'attested to be a true copy of the petition' are his own signatures in ink. The signature above the word 'petitioner' is the photo impression of his signatures. On a closer look of Ex. P-1 and R-1, it is apparent to the naked eye that one of the signatures of the petitioner on each page of the petition and the annexures below the word 'petitioner' are in ink and above the word 'petitioner' are the photo impression of the signatures. What appears to have been done is that after having put rubber stamp on one of the copies of the Election Petition, petitioner appended his signature above the word 'petitioner' and thereafter photostat copies were prepared therefrom. All such photo copies were again signed by the petitioner. There is no dispute that both Exs. P-1 and R-1 are word to word, line to line and page to page the same and similar to the original Election Petition, with the only difference that the Election Petition has been typed out on official judicial paper, which bears on the top the print "Himachal Pradesh Judicial Paper" with serial number and year of print, which print alone has not appeared in the copies, obviously because according to the petitioner, the copies were not prepared from the Election Petition filed in the court but from a carbon copy thereof which has been retained by him as master copy.

In the light of the above the submission made on behalf of respondent No. 1 by Mr. Jain was that there has to be strict compliance of the provision of sub-section (3) of Section 81 of the Act. The copy has to be a true copy of the petition. Since it is not a true copy of the petition but is a copy prepared from a copy of the petition, there is non-compliance of the provisions and the petition is liable to be dismissed. Viewed in this background the submission, the cases cited deserves to be noticed.

Considering the provisions of Part VI of the Act and the question as to what is a 'copy', the Supreme Court in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and others* (AIR 1964 S. C. 1545), held that the word 'copy' does not mean an absolutely the exact copy but it means a copy so true that nobody can by any possibility misunderstand it. The test to be applied is whether any variation from the original is calculated to mislead any ordinary person.

The *Murarka's* case (*supra*) was decided by the constitution Bench on 7th May 1963. Following the ratio of that case in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad and others* (AIR 1964 S. C. 1027), the court held that if there is a substantial compliance with the requirement of Section 81 (3), the Election Petition cannot be dismissed. The signature of the petitioner, whose name was set out in the body of the petition, had appended his signatures at the end. The same was held to be definitely by way of authenticating the contents of the documents. The Court in para 26 of the report observed that :

"..... We do not however consider that there is really need for so much refinement when one has to look at whether there is a substantial compliance with the requirement of this provision. If the signatures now found on the copies were intended to authenticate the document to which it is appended, viz., the copy, it would only mean that the copy did not reproduce the signature in the original. There is no compelling necessity to hold that the signatures were merely intended to be a copy of those on the original in order to spell out a non compliance with S. 81 (3) (seeing that a signature in original was not needed on the copy and a writing copying out the name of the signature would

suffice. The decision of this Court in *Murarka's case*, C. A Nos. 30 and 31 of 1963 D/ 5.5.1963 (S. C.) is authority for the position that the absence of a writing in the copy indicating the signature in the original would not detract the copy from being a true copy. In the circumstances, we consider that there has been substantial compliance with the requirement of S. 81 (3) in the petition that was filed by the appellant and the learned Judges were in error in directing the dismissal of the petition".

Another constitution Bench in *Dr. Anup Singh v. Abdul Ghani & others* (AIR 1965 S. C. 815), held substantial compliance with Section 81 (3) to have been made when in the carbon copies of original Election Petition the words 'true copy' were not written above the signatures.

The signature of the petitioner, only at the foot of the copy of the affidavit, accompanying the copy of the Election Petition, and not on the copy of the petition, was, in *M. Kamalam v. Dr. V. A. Syed Mohammed* (AIR 1978 S. C. 840), held to be sufficient compliance of the provisions of section 81 (3) of the Act. The court held that in fact the copy of the affidavit constituted the end portion of the copy of the Election Petition and the signature placed at the foot of the copy of the affidavit was clearly referable to the entire copy preceding it and it authenticated the whole of the copy of the Election Petition to be a true copy.

Approving the ratio of decisions in *Subba Rao's* and *Kamlam's* cases (*supra*), the Supreme Court in *F. A. Sapa etc. vs. Singora and others* (AIR 1991 S. C. 1557), held that the requirement of Section 81 (3) is that the petitioner must take the responsibility of the copy being a true copy of the original petition and sign in taken thereof. No particular form of attestation is prescribed. A petitioner will be deemed to have complied with the letter and spirit of Section 81 (3) of the Act, when he certifies the copy as a true copy by putting his signature at the foot thereof. In that case, 15 different Election Petitions questioning the election of a returned candidate were filed. The objection raised was that the Election Petition in each case was a mere photo copy prepared from a typed one and the copy of Election Petition served on the returned candidate in each case was not duly attested to be a true copy of the original as required by Section 81 (3) of the Act, therefore, the petitions were liable to be dismissed *in limine* under Section 86 (1) of the Act. Such an objection was negated by the High Court. Each of the petition, which was a photo copy, prepared from a model election petition was treated to be the original election petition. The Supreme Court upheld the verdict of the High Court by holding in para 30 of its report as under :

"... Section 81 (1) does not debar photocopying but Rule 1 of the Rules says that it shall be 'type-written or printed'. There is no dispute that a model election petition was prepared and got typed and prints thereof were taken out by the process of photocopying. These prints were used both as original election petitions as well as copies. The particulars in regard to each petition, e. g., the names of the parties, the voting pattern, the towns and villages where utterances amounting to corrupt practice were made, etc., were filed in and the court-fee was affixed on one of them which constituted the original and photocopies thereof were filed before the Stamp Reporter in accordance with the Rules. The photocopy bearing the court-fee stamps was indisputably signed by the election petitioner and was presented with sufficient copies to the Stamp Reporter. The original election petition itself, therefore, a photocopy of the typed model and the copies are also photocopies prepared from the original petition. Evidently, the underlying idea in providing that the election petition shall be type-written or printed is to ensure that the document is legible. There is no complaint that the document which is admitted as an election petition and the copies thereof are not legible. If that be so it is difficult to appreciate the objection that the photocopy should not be treated as an original petition even if it otherwise complies with the requirement of law....."

Applying the aforementioned decisions to the facts of the instant case, when to the naked eye, each page of Ex.R-1, the copy of petition, served on respondent No. 1, bears the signatures of the petitioner with an endorsement above that "attested to be true copy of the petition" and there being no dispute that the copy of the petition with annexures word to word, line to line and page to page is similar to the original, without any change and being legible, there is no manner of doubt that there is meticulous compliance of Section 81 (3) of the Act and the petition is not liable to be dismissed under Section 86 (1) as contended by Mr. Jain. This issue is accordingly decided against respondent No. 1.

Issue No. 1 :

The objection of the returned candidate is that the Election Petition as well as the affidavit have not been verified in accordance with law. The averments made in the petition, as regards the contents of paras 6, 9 to 17, 19 (i), (ii), (a) to (c) and (e) to (i) and 20 to 23, 25 and 26 have been verified upon information received and believed to be true, but the petitioner has failed to disclose the source of information, which is mandatory law. Similarly, in the affidavit the verification to various statements as regards allegations of corrupt practice is made on the basis of information received but source of the information is not disclosed. It is contended that the petition is liable to be dismissed *in limine*, since it is mandatory in law to disclose the source of information and the affidavit has to be in strict conformity with Form 25.

It is not disputed that except for paragraphs 1 to 5, 7, 8, 18, 19 (ii), (d) and 24, which have been verified to be true to his knowledge, the rest of the contents of the petition as well as the entire statements made in paras (a) to (f) in the affidavit, as regards allegations of corrupt practices have been verified to be true on the basis of information received but source of information is not disclosed.

Clause (c) of sub-section (1) of Section 83 of the Act requires that an Election Petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) for the verification of the pleadings. Proviso to this clause (c) requires an Election Petition to be accompanied by an affidavit in the prescribed form in support of the allegations, where the petitioner alleges corrupt practice, in support of the allegations of such corrupt practice and the particulars thereof.

Rule 15 of order VI of the Code is the provision relating to the verification of pleadings and reads as under :—

"15. *Verification of pleadings.*—(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case".

Rule 94-A of the Conduct of Election Rules, 1961 (hereinafter called as 'the rules') says that the affidavit referred to in the proviso to sub-section (1) of Section 83, shall be sworn before a Magistrate of the First Class, or a Notary or a Commissioner of Oaths and shall be in Form 25. Form 25 appended to the rules is the format of the affidavit.

On the strength of the aforementioned provisions, it is contended on behalf of respondent No. 1 by Mr. Jain that in the absence of having disclosed the source of information, the verification is defective and such a defect is fatal, which must result in the dismissal of the petition. In view of this submission, the question posed is as to whether the defect in the verification of the petition or the affidavit is a substantial defect, so as to make it fatal resulting in the dismissal of the petition at the threshold.

Since, the trial of the Election Petition has to follow, as far as may be the provisions of the Code of Civil Procedure, it is permissible to look into the Code to see what exactly would have been the case if the Election Petition was a suit. The law is settled. Defective verification of the plaint would not entail its rejection but the defect is curable by calling upon the plaintiff to carry out the necessary amendment. Referring to the aforementioned provisions of the Code in *Murarka Radhey Shyam's case (supra)*, it was held that reading the relevant section in Part VI of the Act, it is possible to accept the contention that the defect in the verification, which is to be made in the manner laid down in the Code for the verification of the pleadings, is fatal to the maintainability of the petition.

Source of information, which according to respondent No. 1, is necessary, is not provided for in format No. 25 of the rules, but as contended, the same must be disclosed in accordance with rule 3 of order 19 of the Code, read with Rule 9 of Ch. 12-B in Vol. IV of the High Court Rules & Orders and with rule 5 of Ch. XVIII of the rules applicable to the original side of this Court, wherein it is necessary for a deponent to disclose in the affidavit when the averments made therein are verified to be true on the basis of information received to disclose the source of information. Admittedly, the source of information is not disclosed. The effect of non-disclosure of the source of information deserves to be seen.

Similar question of the effect of non-disclosure of source of information, which was required to be given under the provisions of rule 7 of the Madhya Pradesh High Court Rules, came up for consideration in *Virendra Kumar Saklecha v. Jagjwan and others (A I R 1974 S. C. 1957)*. The question was not decided in view of the fact that the election petition had been heard by the High Court for several months on merits after recording evidence. However, importance of disclosing the source of information was emphasised by the Court observing :

"The non-disclosure of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the source of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case it will be discovered".

In *Prabhu Narayan v. A. K. Srivastya (A I R 1975 S C 968)*, absence of source of information in the affidavit regarding corrupt practices, which otherwise was in accordance with form 25 was held not to be fatal. Reliance was placed in holding so in *Krishan Chander v. Ram Lal (A I R 1973 S C 2513)*, wherein a similar submission, as is made in this case by Mr. Jain was negated by holding that "when there are specific rules made under the Act which govern the Election Petitions, no other rules are applicable. Nor is the disclosure of the source of information a requisite under Order VI rule 15 (2) C. P. C.". An affidavit filed in the prescribed form 25 of the rules affirming statement made in the relevant paragraph to be true to his information by the petitioner, without disclosing source of information is held to be sufficient compliance of the provisions of law in *K. M. Mani v. P. J. Antony and others (A I R 1979 S C 234)*.

In *F. A. Sapa's case (supra)*, reviewing the entire case law on the subject and approving the ratio in *Murarka's* and *Saklecha's cases (supra)*, it was held that the Election Petition under section 83(1) (b) must itself contain all the necessary material facts and in the affidavit, the petitioner is required to say which of the allegations are based on personal knowledge and which are based on information received and believed to be true. If the source of information has not been

set out and the opposite party finds it difficult to answer the allegations regarding the corrupt practice he can always apply for better particulars. Failure to disclose or divulge the source of information, cannot be fatal to the maintainability of the Election Petition. Noticing the subsequent decision in *Prabhu Narain's case* (*supra*) and *Z.B. Bukhari v. B. R. Metha* (A I R 1975 S C 1788), as also to an earlier decision in *Sahodrabai Rai v. Ram Singh Aharwar* (A I R 1968 S C 1079), the court in para 27 of the judgment held that :

“From the text of the relevant provisions of the R. P. Act, Rule 94 A and Form 25 as well as Order 6, Rule 15 and Order 19, Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured, (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments of allegations which are based on information believed to be true, (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same, and (iv) the defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under Section 81 (3) as indicated earlier. Similarly, the Court would have to decide in each individual case whether the schedule or annexure referred to in Section 83 (2) constitutes an integral part of the election petition or not, different considerations will follow in the case of the former as compared to those in the case of the later”.

Thus looking at the question posed in the light of the decision, the consistent view is that failure to disclose the source of information promptly, may have an adverse bearing on the probative value to be attached to the evidence, tendered in proof thereof but it is not fatal to the maintainability of the petition. A defective verification in the petition is curable and failure to disclose the ground (s) or source (s) of information is not fatal. If the party desires, better particulars as regards such averments or allegations may be called, which the petitioner may be required to file. However, failure to place them on record with promptitude may lead the court in a given case, to doubt the veracity of the evidence tendered. In case, the affidavit or schedule or annexure form an integral part of an Election Petition itself strict compliance of provision of law would be insisted upon and defect concerning material facts will have to be dealt with subject to the limitations in Section 81(3) of the Act.

In this view of the matter, the defect in the verification clause of the petition as also in the affidavit is not fatal and petition cannot be dismissed on this ground alone. However, keeping in view the fact that the affidavit in the instant case forms an integral part of the Election Petition, which is in support of the allegations of corrupt practices, the effect of non-disclosure of the source (s) of information will have to be seen while discussing issues 2 and 3. Issue No. 1, as such is decided against respondent No. 1.

Issue No. 4:

The allegations in para 19 of the petition are that the returned candidate and his agent with his consent promoted feeling of enmity and hatred between different classes of citizens of Hamirpur Parliamentary constituency on the grounds of religion for the furtherance of the election of the returned candidate and prejudicially affected the prospectus of the petitioner's election and published an appeal to the electors. In sub-para (h) thereof reference has not been made to a public addressed by Sadhvi Ritambhara on 16th May 1991 in Government College ground at Bilaspur alleging that “Sadhvi Ritambra delivered a speech and addressed massive gathering of voters. The speech of Sadhvi Ritambra was tape recorded and the transcript thereof is placed on the record as Annexure P-14. The tape recorded cassette containing her address in the public meeting at Bilaspur shall be produced and demontsrated in the court during the course of the trial”.

In the same para it is alleged that the speech was an attempt to promote feelings of enmity and hatred between different classes of citizens. It is also stated that the tape along with video cassettes were displayed by the returned candidate through his election agents and other agents with his consent in almost entire constituency, which had the effect of arousing the sentiments of the electors and promoting the feelings of enmity and hatred between Hindus and Muslims. In sub-para (iv) (v) (vi) and (vii) of para 20 the petitioner has alleged that the returned candidate indulged in promotion of feelings of enmity and hatred between different classes of citizens of India on the ground of caste and community in addition to religion. Reference therein has been made to the playing of the speech of Sadhvi Ritambra recorded in audio cassettes appealing to voters in meetings held on 6th, 13th, 6th and 5th May 1991, at Taunidevi Tehsil Hamirpur, Daulatpur chowk in District Una, Kandaur in District Bilaspur and Pir Saluhi in Tehsil Dehra, respectively.

With respect to the speech, referred to in sub-para (h) of para 19 of Sadhvi Ritambra alleged to have been tape recorded, a transcript is stated to have been placed on the record of the petition as Annexure P-14 but there is no transcript placed on the record with respect to the speeches alleged to have been played in audio cassettes in the alleged meetings referred to in sub-paragraphs (iv) to (vii) of para 20. The video cassette (s) is also not produced on the record. The objection of respondent No. 1 is that since the cassettes and speeches form an integral part of the petition it was necessary for the petitioner to have placed on record the cassette whether it was video or audio and to supply to the respondents a copy thereof in accordance with law. In the absence of filing of the cassette which form an integral part of the petition, the same has to be dismissed as not complying with the requirements of law.

The submission of the learned counsel for the petitioner is that the production of cassettes in the court is not mandatory, even if it be assumed or held that the same are integral parts of the petition. Whether or not the cassette would be integral part of the petition cannot be decided unless the cassettes are filed in the court. The petitioner has filed only a transcript of the speech alleged to have been made on 16th May, 1991 and admittedly copy thereof has been supplied to the respondents, there is sufficient compliance with the provisions of law. With respect to the playing of the video cassette containing speeches of Sadhvi Ritambhra in the four meetings referred to in para 20, necessary averments and gists of speeches have been made and disclosed in the petition. Since the petitioner is not in possession of the cassettes there is no question of production of the said cassettes in the court, nor it was possible to file any transcript thereof. Non-filing or non-production of documents is not the requirement of law and will not be fatal. It is not required under law that copies of such of the documents which are not filed or annexed to the petition be supplied to the opposite party.

In *Sahodra Bai's case (supra)*, in which the election petition itself reproduced the whole of the pamphlet translated in English by way of particulars of a corrupt practice and the original pamphlet in Hindi (Devnagri) was filed as an Annexure to the petition, without supplying copy thereof to the respondent, alongwith the copy of petition, the Supreme Court held that there was no breach of the provisions of the Act in regard to the filing of the election petition, since the election petition itself reproduced the whole of the translation in English, which averments with regard to pamphlet were themselves a part of the petition. The pamphlet was served upon the opposite party in a translated form and not in Hindi. The pamphlet in Hindi was held merely to be a document being a piece of evidence in the case, which for reasons of clarity and to lend force to the petition was not kept back but produced or filed with the election petition. It was held in no sense to be an integral part of the averments in the petition but only evidence of those averments and a proof thereof. The ratio of this case was followed in *M. Kundan's case (supra)*, wherein the court held :

"...if a schedule or annexure is an integral part of the election petition, it must be signed by the petitioner and verified, since it forms part of the election petition. The subject-matter of sub-section (2) is thus a schedule or annexure forming part of the

election petition and hence it is placed in Section 83 which deals with contents of an election petition. Similarly, and for the same reasons, the affidavit referred to in the proviso to Section 83 sub-section (1) also forms part of the election petition. The election petition is in truth and reality one document, consisting of two parts, one being the election petition proper and the other being the affidavit referred to in the proviso to Section 83, sub-section (1). The copy of the election petition required to be filed under the first part of sub-section (3) of Section 81, would, therefore, on a fair reading of that provision along with Section 83, include a copy of the affidavit.....".

The mandatory requirement of sub-section (3) of Section 81 of the Act is in two parts. The first part provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and the second part deals with the manner in which such copies shall be attested by the petitioner under his own signature to be true copy. Since these are mandatory provisions the same must be fulfilled exactly as provided in law but, in so far as directory provisions are concerned it is sufficient if they are substantially complied with. The contention on behalf of respondent No.1 is that by making reference to cassettes which contains the alleged speeches of Sadhvi Ritambhara and without reproducing the speeches, the cassettes become integral part of the petition. Being an integral part, these should have been supplied along with the petition. Therefore, the non-supply thereof, in view of sub-section (3) of Section 81 read with Section 86 is fatal.

The question that when a document referred to and attached to the election petition would become an integral part or be merely a piece of evidence and a proof of the allegations contained therein, came up for consideration in *M. Karunanidhi v. H.V. Handa and others* (AIR 1983 SC 558). Photographs, which were produced in court, copies of which were not supplied to the opposite party were held to form an integral part of the election petition and not merely a piece of evidence, where allegations were based on photograph. Failure to supply copies of photograph was held to be amounting to violation of Section 81 (3) of the Act. Referring to *Sahodrabai's* case (*supra*) and to the pleadings of the case the court held :

"The test to be applied in determining whether the photograph referred to in paragraph 18 (b) is an integral part of the election petition or was merely a piece of evidence in proof of the allegations contained therein depends on whether it is a part of the pleadings....".

The reasons which prevailed with the court holding the photograph to be an integral part of the petition were that in the absence of the photograph, the averment contained in the petition would be incomplete and consequently, non-supply thereof a total non-compliance of Section 81 (3) of the Act. In para 42, of the report, the court held:

"The conclusion is irresistible that the words 'copies thereof' in sub-sec. (3) of Section 81 read in the context of sub-section (2) of Sec. 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein. That being so, we are constrained to reverse the judgement of the High Court insofar as it holds that the photograph of the fancy banner adverted to in paragraph 18 (b) could not be treated to be integral part of the election petition but was merely a piece of evidence as to the nature and type of fancy banner erected by the appellant and therefore failure to supply a copy of the photograph to the appellant did not amount to a violation of the provisions of sub-sec. (3) of Section 81 of the Act."

Following the ratio in *Sahodrabai's* case (*supra*), in a subsequent judgement in *A. Madan Mohan v. Kalavakunta Chandra Shekhara* (AIR 1984 SC 871), it was held that the document, unless expressly referred to in the petition, would not become an integral part of the petition and

as such copy thereof need not be supplied since the same would only be a piece of evidence as regards the averments in the petition and it would always be open to the opposite party to inspect them and find out the allegations made in the petition.

In *U.S. Sasidharan vs. K. Karunakaran and another* (AIR 1990 Supreme Court 924) it was held that when a reference is made in the election petition to a document, while stating material facts or particulars, when such material facts and particulars are contained in the documents and its contents are not pleaded in the petition, the document would become an integral part of the petition. The observations of the Court to this effect are to be found in paras 15 to 17 of the report as follows :—

- “15. We have already referred to section 83 relating to the contents of the election petition. The election petition shall contain a concise statement of material facts and also set forth full particulars of any corrupt practice. The material facts or particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81 (3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition and a copy of such document is not furnished to the respondents along with a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of section 81 (3) and, as such, the court has to dismiss the election petition under Section 86 (1) for non-compliance with section 81 (3).
16. On the other hand if the contents of the document in question are pleaded in the election petition, the document does not form an integral part of the election petition. In such a case, a copy of the document need not be served on the respondent and that will not be non-compliance with the provision of S. 81 (3). The document may be relied upon as an evidence in the proceedings. In other words, when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent along with a copy of the election petition.
17. There may be another situation when a copy of the document need not be served on the respondent along with the election petition. When a document has been filed in the proceedings, but is not referred to in the petition either directly or indirectly, a copy of such document need not be served on the respondent. What S. 81 (3) enjoins is that a true copy of the election petition has to be served on the respondents including the elected candidate. When a document forms an integral part of an election petition containing material facts or particulars of corrupt practice, then a copy of the election petition without such a document is not complete and cannot be said to be a true copy of the election petition. Copy of such document must be served on the respondents”.

In that case there was specific allegation made as regards the video cassette recording the speeches of Government officers, alleged to have been used by the returned candidate and prepared at the instance of the said candidate for election propaganda. The video cassette was held to form an integral part of the petition. Copy of the election petition served without serving copy of video cassette was held to be non-compliance of the provisions of Section 81 (3) of the Act.

Considering the aforementioned cases, it is apparent that when the contents of a document are pleaded in the election petition, the document does not form an integral part of an election petition. In such a case, a copy of the document need not be served on the respondent and that will not be a non-compliance with the provisions of Section 81 (3) of the Act. The document may be relied upon as an evidence in the proceedings. In the instant case, the petitioner has relied upon only a transcript of the alleged video cassette recording of the alleged speech of 16th May, 1991. Neither the cassette has been filed, nor its copy supplied to the respondents. Similarly, with respect to the other speeches only a reference is made to the speeches but neither the transcript thereof nor cassettes have been either filed in the court or attached with the election petition. Copies thereof have also not been supplied to the respondents. Speeches have also not been reproduced. Irrespective of the fact that whether the cassettes form an integral part of the petition or not, when such cassettes have not at all been either annexed to the petition or filed alongwith the petition in the Court, neither it is shown, nor in view of any of the provisions of the Act or the Code it was obligation on the part of the petitioner to have supplied copies of the same to the respondents. However, the effect of not filing the same in Court will have to be examined while considering the other issues framed namely, whether in the absence of these cassettes, the petition can be said to be disclosing a complete cause of action in support of the grounds of corrupt practices. The issue is accordingly decided against the respondent.

Issue No. 2:

The averments made in para 12 of the petition are in support of the ground that the result of election in so far as it concerns the returned candidate has materially been affected by improper reception of votes which were liable to be rejected and which were void. It is alleged that the votes have improperly been counted in favour of the returned candidate and improperly been rejected which were in favour of the petitioner. Sub-paras (i) to (v) thereof, according to the petitioner, contain the particulars of such improper reception/rejection of votes and are to the following effect :—

- “(i) That out of 5831 postal ballots 250 were received after the expiry of the time fixed in that behalf and therefore those covers in Form 13-C could not have been opened, but this objection of the petitioner was turned down. It is however submitted that out of 5831 postal ballots received, 1737 ballots were rejected.
- (ii) That the Returning Officer without scrutinising the declarations in form 13-A, as to whether such declarations were there or not or as to whether they were duly signed and attested or were otherwise substantially defective or whether the serial number of the ballot papers as entered in it differed from the serial number endorsed on the Cover Form 13-B, opened the covers and counted the votes. The petitioner submits that there were 150 covers which did not contain the declaration in form 13-A and 200 declarations were not duly signed and attested and in respect of 125 declarations the serial number of the ballots differed from the serial number endorsed on the Cover on Form 13-B, but the Returning Officer by non-compliance of the provisions of the rules made in this behalf improperly accepted those votes in favour of the returned candidate.
- (iii) That 25 ballot papers bore marks by which the elector could be identified and therefore were liable to be rejected but they have been improperly accepted in favour of the returned candidate.
- (iv) That 60 ballots were not returned in the covers sent along with it to the elector by the Returning Officer and therefore were liable to be rejected, but the same have been improperly accepted in favour of the returned candidate.
- (v) That out of rejected votes 320 votes were duly voted for the petitioner but have been wrongly rejected”.

After making the aforementioned averments, particulars regarding other votes wrongfully accepted or rejected wrongfully are narrated from page 8 to 56 of the petition with names of the polling stations.

The objection, giving rise to the framing of this issue is that false, baseless and imaginary allegations have been made in this para by reproducing in about 48 pages of the petition the names of almost all polling booths in the entire Parliamentary Constituency, mentioning at random the ballot papers numbering 1 to 15 on each polling station having been either wrongly counted, rejected or accepted. It is stated that neither the details nor particulars of the ballot papers have been given. It is also not disclosed as to how the petitioner has got the information. The figures are imaginary. It is alleged that petitioner as well as counting agents were present in the counting hall and at the time when ballot papers were counted not even a single objection was raised by the counting agents. Since figures are only imaginary and product of wishful thinking on the part of the petitioner, the allegations in para 12 of the petition as a whole are liable to be struck off. In reply to this preliminary objection, the petitioner in his rejoinder has not averred that any objection was raised either by him or any of his counting agents at the time of counting. It has been asserted that the petitioner is not required to mention evidence in support of the allegations and that material facts have already been supplied. In order to assess the strength in the objection and the impact of the averments made in para 12 of the petition, it is worthwhile to make a reference to various provisions of the Act and the Rules.

Chapter V of the Act deals with the counting of the votes and Section 64 therein says that at every election where the poll is taken, votes shall be counted by or under the supervision and directions of the Returning Officer and each contesting candidate, his election agent and his counting agents, shall have a right to be present at the time of counting. Section 66 requires the declaration of the result of the election in the manner as provided in the Act or Rules the movement counting of votes has completed.

Part-V of the Conduct of Election Rules, 1961 (hereinafter referred to as 'the Rules') relates to the counting of votes in a Parliamentary and Assembly Constituency. At least one week before the date, the Returning Officer by virtue of Rule 51 is required to appoint the place or places where the counting of votes is to be done along with date and time where the counting is to commence. A candidate is entitled to appoint counting agents by virtue of Section 47 read with Rule 52, which term has been defined in Rule 51 (c) to mean a counting agent duly appointed under Section 47 and includes a candidate and the election agent of a candidate at the counting. Ballot papers received by post are required to be dealt with by the Returning Officer first by virtue of Rule 54 (A), which contains details of the procedure to be followed for accepting or rejecting and counting the votes cast by postal ballot. After complying with the necessary formality all postal ballots and rejected ballots are required to be separately bundled and kept together in a packet, which is to be sealed with the seal of the Returning Officer and of such candidates, their election agents and counting agents as may desire to fix their seal thereon. After dealing with the postal ballots, the Returning Officer by virtue of Rule 55 is required to have the ballot boxes, used in various polling stations, opened and to have the ballot papers, found in such boxes, counted simultaneously. Counting agents present at the table are allowed to inspect the paper seal or other such seals as might have been affixed thereupon. Rule 56 casts a duty upon the Returning Officer to have the ballot papers, taken out of each ballot box, arranged in convenient bundles and scrutinised. Ballot papers, as provided in sub rule (2) of Rule 56 may be rejected, if any of the defects stated in sub clauses (a) to (h) is noticed. Sub-rule (3) thereof enjoins a duty on the Returning Officer to allow each counting agent present a reasonable opportunity to inspect the ballot paper before rejecting the same under sub-rule (2). After rejecting a ballot paper, the Returning Officer is required to make an endorsement on each ballot paper with the word 'rejected' along with ground of rejection in abbreviated form. All rejected ballot papers are then to be bundled together. Such of the ballot papers which have not been rejected are thereafter to be counted. After the counting is completed the counting supervisor is obliged to prepare the result of counting by filling and signing Part-II in form 16, which ultimately is required to be signed by the Returning Officer. Clause (b) of sub-rule (7) of Rule 56 says that the Returning Officer shall then make the entry in a result sheet in form-20 and announce the particulars.

Counting as per Rule 60 has to be continuous. Rule 63 says that after the completion of the counting, the Returning Officer shall record the result in form 20 about the total number of votes polled by each candidate and announce the same. After such announcement, the candidate or in his absence, his election agent or any of his counting agents is entitled to apply in writing, as is envisaged under sub-rule (2) thereof to the Returning Officer for a recount of the votes, either wholly or in part, stating the ground on which demand for recount is made. On such an application having been made, the Returning Officer is required to decide the same by recording his decision with reasons thereof. In case a recount is ordered, either wholly or in part, same procedure is to be followed for recounting the votes, as is required to be followed for counting the votes. On recount, result sheet in form 20 is required to be amended and amendments so made are again required to be announced by the Returning Officer. Sub-rule (6) of rule 63 provides that after the total number of votes polled by each candidate has been announced, the Returning Officer shall complete and sign the result sheet whereafter no application for recount shall be entertained. This is subject to a proviso that no steps, to announce the result of counting is to be taken, until the candidate and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right to have a recount conferred by sub-rule (2).

If ballot papers are counted at more places than one, the same procedure shall apply to the counting at each place as regards counting of votes but rule 54 (A) pertaining to postal ballot, rule 63 relating to recount of votes and rule 64 pertaining to declaration of the result of election is to apply only to the counting at the last of such places.

On completion of aforementioned process, result to be declared in an appropriate form, as per the requirement of Rule 64, declaring the candidate to whom the largest votes have been given.

In the light of the aforementioned provisions of the Act and the Rules it has to be seen whether the averments made by the petitioner praying for declaring the election of the respondent to be void due to the improper acceptance and rejection of the votes and further declaring that but for the votes obtained by the returned candidate accepted or rejected wrongfully, the petitioner would have secured the majority of votes and as such he be declared as duly elected, are sufficient enough so that the petition may be set down for trial on merits or whether the averments are totally vague not containing material facts disclosing any cause of action. A bare reading of the entire para 12 with sub-para (i) to (v) would show that grievance has been made relating to 5831 postal ballots. 1837 ballots are stated to have been rejected and 320 out of these are alleged to have been casted in favour of the petitioner and wrongly rejected. It is alleged that 150 did not contain any declaration; in 200 declaration was neither signed nor attested; serial number on 125 ballots differed from the serial number on the declarations; 25 ballots bore marks of identification and 60 were not received in the covers sent for the purpose. In all, these averments account for 560 ballots as having been improperly accepted in favour of the returned candidate. 250 ballots are alleged to have been received after the expiry of the time fixed in that behalf. It is not alleged as to whether these were accepted or were counted in favour of the returned candidate.

The further averment made in para 12, as can be ascertained, by making proper calculations of the data supplied from page 8 to 56 of the petition with respect to the other ballots, is that in 697 Polling Stations of 12 Assembly Segments 3565 ballots were either wrongfully accepted or rejected as under :—

| Name of Assembly Segment | Total number of Polling Stations | Ballots wrongly accepted/rejected |
|--------------------------|----------------------------------|-----------------------------------|
| | 2 | 3 |
| 1 | | |
| Bilaspur | 69 | 250 |
| Ghumarwin | 52 | 268 |

| 1 | 2 | 3 |
|-------------|-----|------|
| Nadaun | 51 | 213 |
| Hamirpur | 54 | 467 |
| Mewa | 56 | 275 |
| Nadaunta | 62 | 327 |
| Chingpurni | 54 | 261 |
| Santokhgarh | 63 | 254 |
| Una | 64 | 226 |
| Kutlehar | 66 | 323 |
| Pragpur | 61 | 473 |
| Jawalamukhi | 45 | 228 |
| | 697 | 3565 |

It is not ascertainable by making reference to the averments made in para 12 as to whether these pertain to postal ballot or to the other ballots. Since the averments relate to 697 polling stations, it can be only inferred that the information is not for the postal ballots. In the third column the petitioner has made an effort to elaborate the averments by showing the manner in which the ballots were wrongfully accepted or rejected. To cite example, some of the allegations are as follows :—

Khundian

— A bundle of 50 ballots which had marking for petitioner was wrongly put in the account of the returned candidate.

Tipp.

— 3 ballots in which voters were identifiable were given to returned candidate.

Beehan.

— 7 ballots which had multiple marking were given to returned candidate.

Padyola.

— 3 ballots which had marking for the petitioner were given to returned candidate when counting agents were handling the ballots.

Similar allegation have been made in similar words as regards 697 Polling Stations and 3565 ballots. The objection is that there is total lack of material particulars giving rise to a triable cause of action.

Since the allegations are with respect to both postal ballot and the other ballots, in addition to the provisions of the Act and the Rules discussed above, reference to some of the other provisions will also be necessary, in order to find out as to whether the allegations made in the entire para 12 give rise to a triable cause of action.

Postal ballot papers are required to be dealt with first at the time of counting. No cover in form 13-C, received after the expiry of the time fixed in that behalf, can be opened and no vote contained therein can be counted. After excluding the covers received after the expiry of the time, other covers are to be opened, but before doing so the Returning Officer has to first scrutinise the declaration by the elector in form 13-A contained therein. If the declaration is missing or is not signed and attested or is otherwise defective in any manner, or if the serial number of the ballot paper differs from the serial number on the cover in form 13-B the said cover is not to be opened and after making appropriate endorsement, the Returning Officer is bound to reject the ballot papers contained therein. All these rejected ballots are to be kept in a separate packet to be sealed in the manner provided for. After the needful has to be done, all such declarations in form 13-A, which are found to be in order are to be separately packed and sealed and it is only thereafter that all covers in form 13-B are to be opened. On opening of form 13-B the ballot papers contained therein are required to be scrutinised by the Returning Officer.

who has to decide the validity of the votes recorded therein. Postal ballot paper is to be rejected in the eventualities, as are stipulated in sub-clauses (a) to (e) of sub-rule (8) of Rule 54 A. Sub-rule (12) ensures the performance of duty by the Returning officer in the manner prescribed, since all the accepted and rejected ballot papers, which are to be kept in a separate bundles and then kept together in a packet are required to be sealed with the seal of the Returning officer and of the candidates, their election agents and counting agents as may desire to affix their seals thereupon. This process is to be completed after the Returning Officer having counted all valid votes and recorded the total in the result sheet in form-20.

Similarly, Rule 56 details the procedure of counting of other votes, as has been noticed above to be dealt with in the light of the afore mentioned provisions of the rules as also in the light of the allegations made in paras 13 and 14 of the petition.

It is alleged in para 13 that the ballot papers were counted at more places than one, last of which was Hamirpur. On 16th June, 1991, the petitioner went to Mr S. M. Katwal, the Returning Officer and brought to his notice various irregularities having been committed during counting of votes and expressed his right to seek recount. The petitioner has alleged that he was told by Mr S. M. Katwal that since the counting at Hamirpur was likely to be over shortly and the result at three centres had not till then received, he was assured that opportunity shall be afforded to him, as provided under the Rules without which final results cannot be declared. The petitioner believed such an assurance and left for his office, feeling assured that he shall be given an opportunity by the Returning Officer. It is further alleged that the petitioner had appointed Shri Ranjit Singh Verma as the counting agent on the table of the Returning Officer and after about an hour he was informed by Shri Verma that counting of Hamirpur was over and since the results from three other centres had not reached, counting had been adjourned. The petitioner kept on waiting for information from the Returning Officer but without affording the petitioner an opportunity to exercise his right to demand recount, the result was declared of which the petitioner came to know in the early hours of 17th June, 1991 when he turned All India Radio.

Dealing with the grievance which virtually is about recount first, suffice it to say that by virtue of Rule 65 provisions of Rule 54-A and 63 would apply only to the last counting place, namely, Hamirpur, where according to the petitioner, the Returning Officer himself was present and on his table Shri Ranjit Singh Verma was the counting agent. There is no averment in para 13 or in the entire petition that after the completion of counting and on recording the result thereof in the result sheet in form 20, when the particulars of the total number of votes polled by each candidate were announced, whether a request in writing to the Returning Officer, to have the recount of votes was or was not made. Sub-rule (2) of Rule 63, as noticed above, in clear terms provides that such a right of recount can be exercised by a candidate or in his absence his election agent or any of his counting agents. In case the petitioner had noticed any irregularity in counting or any irregularity had come to his notice, entitling and enabling him to exercise the right to have recount, either he or in his absence his election agent or any of the counting agents ought to have moved an application in writing stating the ground on which recount was demanded. From the bare averments, it can be noticed that it is not the case of the petitioner that any recount was demanded by moving an application in writing. It is also not the case of the petitioner that attention of the Returning Officer was drawn to any ground on which recount could be demanded. Para 13 of the petition dealing with allegations giving rise to a demand of recount do not contain necessary and mandatory material facts which might enable the petitioner to have a recount.

In para 12 of the petition, wherein averments have been made as regards improper reception or rejection of votes or reception of votes which were void it can be noticed that the petitioner has not given the serial number of the postal ballots, which according to him had been taken into consideration, which in their turn are alleged to have been received after the expiry of the time in that behalf. Similarly, serial number of the postal ballots not containing any declaration in form

13-A or containing unsigned and unattested declaration or the covers having serial numbers different than the one contained in form 13-B or such of the ballot papers bearing marks by which electors could be identified and the ballots received in covers not sent along with it to the electors, have not been given. Serial number of ballots of which particulars are stated from page 8 to page 56 of the petition are also not mentioned. Reading of the Rules make it clear that the petitioner or his election agent or counting agents at all the counting centres were supposed to be possessed of ample opportunity to examine the ballot papers at the time of scrutiny, rejection and acceptance. In respect of each ballot paper the petitioner or in his absence his election agent or in his absence his counting agent or agents would be in a position to set out precisely their objections for acceptance or rejection of the ballot papers. In order to find out the genuineness of the grievance, it is only when the ballot paper numbers are given with respect to those ballot papers with respect to which there is any grievance that the same can be scrutinised. Absence of such an information, which the petitioner alone should have known or should be deemed to know, any inspection of the ballot paper would be merely a roving and fishing inquiry, which precisely is prohibited under Section 83 (1) (a) of the Act. In the entire election petition, grounds in support of allegations made in paras 12 and 13 are not at all stated. Necessity of giving such facts which are material facts, such as number of ballot papers, the precise objection with regard to each of such ballot paper has been held to be a part of statement of material fact, in the absence of which, any averment of the acceptance or rejection of votes or reception of vote to be void will not give rise to a triable cause of action.

In *Dr. Jagjit Singh vs. Giani Kartar Singh* (A.I.R. 1966 Supreme Court 773), the Supreme Court after referring to the scheme of the Act and the Rules, emphasised that the election petitioner who is a defeated candidate has ample opportunity to examine the ballot papers before they are counted and in each case, the objections raised by him or his election agent having been improperly over-ruled. He knows precisely the nature of objection raised by him and the particulars of the voting paper to which those objections related. It is in the light of this background that Section 83 (1) of the Act has to be applied to the petition made for inspection of ballot boxes and such application must contain a concise statement of material facts. The view which the Apex Court had earlier taken in *Ram Sewak Yadav vs. Hussain Kamil Kidwai and others* (A. I. R. 1964 Supreme Court 1239), in *Smt. Dr. Sushila Balraj vs. Shri Ardhendu Bhushan* (1964) C. A. No. 222 of 1964 decided on 18-3-1964 (S. C.) and in *Sita Ram Mahto vs. Ramanandan Rui* (1965) C. A. No. 45 of 1965 decided on 10-2-1965, was applied in the case of *Dr. Jagjit Singh* (supra) by observing,—

“..... Section 83 (1) (a) of the Act requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies ; and in every case, where a prayer is made by a petitioner for the inspection of the ballot boxes, the Tribunal must enquire whether the application made by the petitioner in that behalf contains a concise statement of the material facts on which he relies. Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted, would not serve the purpose which S. 83 (1) (a) has in mind. An application made for the inspection of ballot boxes must give material facts which would enable the Tribunal to consider whether in the interests of justice, the ballot boxes should be inspected or not. In dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored, and it is always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting.”

In *Jitendra Bahadur Singh vs. Krishna Behari and others* (A. I. R. 1970 Supreme Court 276), the Supreme Court held that it is quite easy for the counting agents to note down the serial numbers of the concerned ballot papers, therefore, if the election petition is silent as to the inspection of the ballot papers or whether the counting agents have noted down the serial numbers of those ballot papers or whether those agents raised any objection relating to the validity of those ballot papers, if so, who those agents are and what are the serial numbers of the ballot papers to which each one of them advanced their objections, the material facts required to be stated are not satisfied and

hence scrutiny of ballot paper should not be ordered. The Court while holding so made the following observations---

“.....In the instant case apart from giving certain figures whether true or imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the congress nominee cannot afford the necessary basis. He did not say in the petition who those workers were and what is the basis of their information. It is not his case that they maintained any notes or that he examined their notes, if there were any. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words they must be such facts as to afford a basis for the allegations made in the petition....”

Reiterating the above view in *Beli Ram Bhalaik vs. Jai Behari [Lal Khachi and another]* (A. I. R. 1975 Supreme Court 283), it was held.

“.....that Sections 100 (1) (d) (iii), 101, 102 of the Act and Rule 93 of the Conduct of Election Rules, 1961 implicitly give the Court trying an election petition the power to order a recount or production of the ballot papers and permit their inspection by the parties. Since an order for a recount touches upon the secrecy of the ballot, it should not be made lightly or as a matter of course. Although no caste iron rule of universal application can be or has been laid down, yet, from a beadroll of the decisions of this Court, two broad guidelines are discernible ; that the Court would be justified in ordering a recount or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and (ii) the Court/Tribunal trying the petition is *prima facie* satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.....”

Similar allegations as are contained in paras 12 and 13 of the instant election petition were held in *Beli Ram Bhalaik's case* (supra) as not precise and were held to be general and vague, floating on the suspicions and belief of the petitioner rather than resting on *terra firma* of material facts. Applying the ratio of *Ram Sewak Yadav's case* (supra) that mere allegations that the petitioner suspects or believes that there has been improper reception, refusal or rejection of votes or there has been irregularity in the counting of ballot papers will not be sufficient to support an order of recount and inspection.

Reiterating the aforementioned view in *Chanda Singh vs. Ch. Shiv Ram Verma and others* (A. I. R. 1975 Supreme Court 403), Krishna Iyer, J. observed thus :

“.....On all hands, it is now agreed that the importance of the secrecy of the ballot must not be lost sight of, material facts to back the prayer for inspection must be *bona fide*, clear and cogent and must be supported by good evidence. We would only like to stress that in the whole process, the secrecy is sacrosanct and inviolable except where strong *prima facie* circumstances to suspect the purity, propriety and legality in the counting is made out by definite factual averments, credible probative material and good faith in the very prayer. We may even say that no winning candidate should be afraid of recount and, conditions as they are, a sceptical attitude expecting the unexpected may be correct, informed of course by the broad legal guidelines already set up.....”

Summarising the entire case law, in *Bhabhi vs. Sheo Govind and others* (A. I. R. 1975 Supreme Court 2117), the Court catalogued the following circumstances under which recount could be ordered :

- “(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations ;
- (2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts ;
- (3) The Court must be *prima facie* satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount ;
- (4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties ;
- (5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and
- (6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the *prima facie* satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.
If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper”.

The aforementioned ratio was further approved in *N. Narayanan vs. S. Semmalai and others* (A. I. R. 1980 Supreme Court 206). In *Sasanagounda vs. Dr. S. B. Amarkhed and Others* (A. I. R. 1992 Supreme Court 1163), the Supreme Court held that the Court all not permit a roving enquiry to enable the defeated candidate to have access to the ballot papers to fish out the grounds. In the instant case, without stating the material fact ultimately effort appears to be to have a fishing or proving enquiry in the matter which is totally prohibited. In the absence of the ballot numbers and precise objection with respect to each, the Court will not at all look at such allegations.

Applying the ratio of the aforementioned judgements to the facts of the instant case, it can be noticed that there is total lack of material facts in so far as allegations in paras 12 and 13 are concerned. Ballot paper numbers are not mentioned. With respect to each, the precise objection is not stated. Apart from giving certain figures of the ballot papers, whether true or imaginary, the petitioner has not disclosed any source or material on which he has arrived at those figures. It is his bald assertion. No doubt, he has given the names of Polling Stations but has neither given the table numbers or the counting centres with the number of ballot papers so as to find out as to whether the bald assertion of his is based upon any material. The basis of information has also not been disclosed. It has nowhere been stated in the petition as to whether the information has been supplied to him by the election agent or by his counting agent, if so, the name of the counting agent. In *Jitendra Bahadur Singh's* case (supra), the Supreme Court treated all these facts as material facts required to be stated in the petition. The averments are nothing but as held in *Beli Ram Bhalai's* case, as not precise, being entirely general and vague floating on suspicions and beliefs of the petitioner rather than resting on terra firma of material facts. Thus, there is complete lack of material facts and due to the non-impledment of the basic requirement, namely, the concise statement of material facts which is a *sine qua non* to an election petition, paras 12 and 13 of the petition deserves to be struck off. The issue is decided accordingly.

Issue No. 3.

A petition calling in question any election by virtue of Section 81 of the Act, can be presented on any one or more of the grounds specified in sub-section (1) of Section 103 and Section 101 of

the Act. The grounds stated in sub-section (1) of Section 100 for declaring an election to be void are, *inter alia*, as follows:—

- (a) commission of any corrupt practice by the returned candidate or his election agent or by any other person with the consent of returned candidate or his election agent ;
- (b) improper rejection of any nomination;
- (c) result of the election in so far as it concerns a returned candidate having been materially affected by :
 - (i) improper acceptance of any nomination; or
 - (ii) by commission of corrupt practice, in the interest of returned candidate by an agent, other than his election agent; or
 - (iii) improper reception, refusal or rejection of any vote or reception of any vote, which is void; or
- (iv) due to any non-compliance with the provisions of the Constitution or the Act or Rules made under the Act.

Election petition is required to contain a concise statement of material facts in which the petitioner relies [Section 83 (1) (a)]. Sub-clause (b) of sub-section (1) of Section 83 of the Act further required the setting forth of full particulars of any corrupt practice alleged including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of any such practice.

Various corrupt practices have been defined and enumerated in Section 123 of the Act, such as, bribery, undue influence, appeal on the ground of religion, race, caste, community or language, promotion of feeling of enmity or hatred on the ground of religion, race, caste, community or language; hiring or procuring of vehicles for free conveyance of the electors; obtaining the assistance from any person in the service of the Government etc.

An election petition is to be tried by the High Court as nearly as may be, in accordance with the procedure applicable under the Code for the trial of a suit (Section 87). Sub-section (1) of Section 86 empowers and also enjoins a duty on the High Court to dismiss an election petition, which does not comply with the provisions of Sections 81, 82 or 117 of the Act.

The objection of respondent No. 1 is that the entire petition does not disclose any cause of action and as such is liable to be dismissed. The petitioner on the other hand contends that the petition is not liable to be dismissed at the threshold on the basis of the preliminary objections raised. The facts stated in various paragraphs of the election petition do constitute making of allegations of corrupt practices and also do disclose cause of action within the meaning of Section 100 of the Act.

The question posed is as to whether an election petition can be dismissed at the preliminary stage or has the Court any jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code or to reject the petition under Order 7, Rule 11 thereof as disclosing no cause of action, which need no elaborate discussion. Since Section 87 which deals with the procedure for the trial of petition in accordance with the procedure laid down in the Code, applicable to suits, Order 6 Rule 16, Order 7 Rule 11 and other provisions of the Code are applicable, subject to various other provisions of the Act. Order 6, Rule 16 enjoins upon a Court, at any stage of the proceedings, to strike out or delete pleadings, which are unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the suit. It also empowers the Court to strike off those paras of a plaint, which do not disclose any cause of action. Consequently, it is the duty of the Court to examine the plaint and if on an examination, it finds that it does not disclose any cause of action, Court would be justified in striking off the pleadings. In case, the Court finds the allegations made in the plaint do not make out any cause of action and the trial would prejudice, embarrass and delay the proceedings, it may strike out pleadings and when it finds that no triable issue remains to be considered, it is empowered to reject the plaint under Order 7, Rule 11 of the Code.

It must be realised, as held in *Jagan Nath vs. Jaswant Singh and others* (A. I. R. 1954 Supreme Court 210), that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of the law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. But before an election petition is taken to trial, statutory requirement of election law must be strictly observed, since

“...an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it.....”

In *K. Kamaraja Nadar vs. Kunji Thevar and others* (A. I. R. 1958 S. C. 687), the Supreme Court set aside an order passed by an Election Tribunal and of the High Court, refusing to consider the preliminary objections raised by the returned candidate, at the initial stage, on the ground that the same would be considered at the trial of the election petition; and held that the preliminary objection should be entertained and a decision reached thereupon before further proceedings are taken in the election petition. The Court so observed in the following words :

“We are of opinion that both the Election Tribunal and the High Court were wrong in the view they took. If the preliminary objection was not entertained and a decision reached thereupon, further proceedings taken in the Election Petition would mean a full-fledged trial involving examination of a large number of witnesses on behalf of the 2nd respondent in support of the numerous allegations of corrupt practices attributed by him to the appellant, his agents or others working on his behalf, examination of a large number of witnesses by or on behalf of the appellant controverting the allegation made against him; examination of witnesses in support of the recrimination submitted by the appellant against the 2nd respondent and a large number of visits by the appellant from distant places like Delhi and Bombay to Ranchi resulting in not only heavy expenses and loss of time and diversion of the appellant from his public duty in the various fields of activity including those in the House of the People. It would mean unnecessary harassment and expenses for the appellant which could certainly be avoided if the preliminary objection urged by him was decided at the initial stage by the Election Tribunal”.

Section 83 of the Act, like the Code of Civil Procedure, contains a distinction between material facts and material particulars. The distinction between material facts and material particulars is absolutely important since different consequences may flow from a deficiency of material facts and particulars in the pleadings. As has been held in *Udhav Singh vs. Madhav Rao Scindia* (A. I. R. 1976 Supreme Court 744), that failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under order 6 Rule 16 C. P. C. and if the petition is based solely on those objections, which suffer from lack of material facts, the petition is liable to be summarily rejected.

Constitution Bench considering the pleadings in an election petition challenging the election of Giani Zail Singh, the then President of India, summarily rejected, at the initial stage, the petition on the ground that the pleadings contained in the election petition, even assuming to be true and correct did not disclose any cause of action for setting aside the election of the returned candidate. (See : *Charan Lal Sahu vs. Giani Zail Singh*, A. I. R. 1984 Supreme Court 309). Dealing with the

same question in *Azhar Hussain vs. Rajiv Gandhi* (A. I. R. 1986 Supreme Court 1253), it was held that the whole purpose of the conferment of powers to reject a petition disclosing no cause of action is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. It was further held that :

“.....Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The Courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the Court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable arguments. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matters pertaining to ordinary Civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging on an elected member of the Legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in a campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to win the vote of the people but also to win the vote of the Court in a long drawn out litigation before he can whole-heartedly engage himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity. He may even have occasions to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern metal, the constraint introduced by the pendency of an election petition may have some impact on his subconscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative

of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest if the facts of the case and the law so warrant. Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such power is warranted under the relevant provisions of law. To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The Court cannot accede to such a proposition.....”

The aforementioned proposition that an election petition, which does not disclose a cause of action, should be dismissed in limine, was further reiterated in *Bhagwati Prasad Dixi 'Ghorewala' vs. Rajeev Gandhi* (A. I. R. 1986 Supreme Court 1534). The legal position, as such, is settled that an election petition is liable to be dismissed in limine at the initial stage, if it does not disclose any cause of action.

A cause of action consists of all facts, which it is essential for a petitioner to allege and to establish. In other words, the bundle of facts which taken with the law applicable to them gives the petitioner a right of some relief against the opposite party. As required under Section 83 of the Act, an election petition shall contain a concise statement of material facts on which the petitioner relies and shall set forth full particulars of any corrupt practice. All the primary facts, which must be proved at the trial by a party to establish the existence of a cause of action are material facts. The distinction between material facts and material particulars has been highlighted by the Apex Court in number of its pronouncements, which have been cited at bar by the learned counsel for the parties and need not be mentioned here since all of them reiterate the same principles. Suffice it will be, to make reference to a few of them.

In *Samant N. Balkrishna etc. vs. George Fernandez and others etc.* (A. I. R. 1969 Supreme Court 1201), the distinction between material facts and material particulars has been stated in the following words :

“.....The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word ‘material’ shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words ‘material facts’ will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without

disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of Section 86 although the penalty of dismissal is taken away.....”

In *Azhar Hussan's* case (supra), the Court held that the material facts are those facts, which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner, in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the election petition. In *Udhav Singh's* case (supra) the material facts were held to be all the primary facts, which must be proved at the trial by a party to establish the existence of a cause of action or his defence and in the context of a charge of corrupt practice, the same were held to mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. It was held that whether a particular fact is material or not and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In other words, it was held that all those facts which are essential to cloth the petitioner with a complete cause of action are material facts, which must be pleaded and a failure to plead even a single material fact amounts to disobedience of the mandate of Section 83 (1) (a).

Particulars, on the other hand, were held to be the details of the case set up by the party and consequently material particulars would, therefore, mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition. Particulars were held to serve the purpose of “finishing touches in the basic contours of a picture already drawn to make it full, more detailed and more informative.”

Having noticed the settled position as regards the contents of the expression ‘material facts’, it is necessary now to examine the various allegations made in the election petition in order to find out as to whether they give rise to triable issues. In other words, it would be necessary to see that whether on the allegations made in the petition, without considering the stand taken by the respondent and without any further evidence, can a verdict be recorded in favour of the petitioner.

Allegations of non-compliance with the provisions of the Act and the Rules :

It has been alleged in para 11 of the petition that the names of the candidates and their symbols were got printed in disregard to the instructions with a motive to get the name of the returned candidate printed at some conspicuous place by changing the alphabetic order and by getting the name of the returned candidate printed at top of the ballot paper. As a consequence, the result of the returned candidate was materially affected. This allegation on the face of it cannot be said to be disclosing any cause of action, so as to result in a triable issue, since it lacks material particulars.

Section 38 of the Act, which is the substantive provision deals with the preparation and publication of lists of contesting candidates in such form and manner as may be prescribed and sub section (2) thereof says that the said list shall contain the names in alphabetical order. Rules 22 & 30 of the Rules relate to the form of ballot paper. Rule 22 pertains to postal ballot paper and Rule 30 to every other ballot paper. These rules envisage the arrangement of the names of the candidate on the ballot paper in the same order in which they appear in the list of contesting candidate. List of contesting candidates is required to be prepared under Rule 10, which says that such list shall contain the particulars set out in forms 7-A and 7-B and be prepared in such language or languages as the Election Commission may direct. Sub-Rule (e) provides the arrangement of the names alphabetically and if the list is in more languages then one, according to the script of one of those languages, as the Election Commission may direct.

Now the allegations do not give all material facts. It is not disclosed as to at what serial number the name of the returned candidate ought to have been printed or whether there was any change in the alphabetical order, *vis-a-vis* the list of contesting candidate, which had been prepared and printed as per the provision of Section 38 read with Rule 10 thereof. It was necessary for the petitioner to have alleged, as a part of material fact that the names of the candidates in the ballot papers were not arranged in the same order, in which they appeared in the list of contesting candidates. The allegations in para 11 thus being absolutely vague, lacking all necessary material facts cannot be said to be at all of a nature which would result in taking the petition to trial and the pleadings deserves to be struck off.

Non-compliance of Rule 13 :

In para 14, it is alleged that the result of the election, in so far as it concerns the returned candidate, has materially been affected by non-compliance of the provisions of Rule 13 of the Rules inasmuch as the Presiding Officers of all polling booths admitted several unauthorised persons as polling agents of the returned candidate. The election at such polling places was influenced by the non-observance of the Rules, which had the impact on the mind of the electors that the returned candidate is so powerful that any of his men had free access to the polling booths. The Presiding Officers also appeared to be siding with the returned candidate.

On the face of it, the allegations also are as vague as they could be. The same do not contain essential and material facts, such as the names and numbers of the persons alleged to have been allowed admission, name of the polling booths where the alleged persons were permitted access. The allegation appears to be with respect to all polling booths. With these vague allegations, an election petition can not be permitted to be set down for trial since it might give ample opportunity to the petitioner to fill in the lacuna and create evidence at his own sweet will. In order to make out a triable issue, the petitioner was required to give a concise statement of material facts, the name of particular booth, name of the person allowed entry and the fact whether such persons had been or not been appointed as polling agents under Section 46 of the Act read with Rule 13. Para 14 of the petition, as such, has to be struck off as disclosing no cause of action.

Commission of corrupt practices :

The rest of the petition, except allegation in para 10, is based upon the allegations of commission of corrupt practices either by the returned candidate or his election agent or by other persons with the consent of returned candidate or his election agent. The same are under various heads which may be dealt with separately.

Bribery :

Bribery, so as to constitute the corrupt practice for the purposes of this Act has been defined in Section 123(1) of the Act as any gift, offer or promise by the candidate or his agent or by any other

person with the consent of a candidate or election agent. This gift, offer or promise has to be of any gratification to an elector with the object directly of inducing that elector to vote or refrain from voting or as a reward to an elector of having voted or refrained from voting. In order to complete the offence of bribery as corrupt practice the receipt of or agreement to receive any gratification, whether as a motive or reward by any person whosoever, for himself or any of the person for voting or refraining from voting for inducing or attempting to induce any elector to vote or refrain from voting.

Pleading of all material facts so as to give a complete picture of the charge of corrupt practices of bribery is necessary, in the absence of which the pleading to that effect is liable to be struck off under Order 6 Rule 16 of the Code. It is not sufficient to merely reproduce the wordings of the definition of bribery, but it is essential that concise statement of material facts is given in such a manner so as to enable the party charged to have a clear idea of what is alleged against him and what case he has to make out. The petitioner is also required to set forth the particulars of corrupt practice including as full a statement as possible of the names of the parties as alleged to have committed such corrupt practice and the date and place of commission of such corrupt practice.

The pleadings in this regard and various allegations of bribery as corrupt practice have been enumerated in paras 15 (i) to (viii), (xii), (xiii), para 22 (c) (d) (e) & (f). Each of such allegations alleged will have to be dealt with separately with precise lacuna as pointed out and its effect.

In para 15 (i), it is alleged that the returned candidate on 12th May, 1991 at about 8.00 P. M. in the meeting of workers at Hamirpur gave instructions that funds are to be distributed to children of Antodya families and grants are to be made to Mahila Mandals in the constituency and then by directly or indirectly inducing the parents of those children and members of Mahila Mandals to vote for him. It is alleged that the workers of the returned candidate assured the voters of the Antodya families and members of Mahila Mandals that in case they vote and support the returned candidate, funds shall be distributed to them and on their promise to vote and support the returned candidate funds were distributed to them.

These allegations of the alleged assurance to the voters is by the workers of the returned candidate and not an assurance directly alleged to have been held out by the candidate. In such an eventuality the necessary and important link which is missing is about the 'consent' of the returned candidate. Besides this, the names of the workers alleged to have given assurance, the names of voters alleged to have given assurance, the names of voters of the Antodya families and members of Mahila Mandals to whom the alleged assurance was held out, the facts of funds distributed etc. are all missing. In the absence of these facts, which are material, the allegations are not proper for making a charge of corrupt practice.

In three different sub-paras of para 15, the allegations of bribe by getting provided water taps as gratification have been made, which may be dealt with together.

The allegations made out in sub-para (ii) of para 15 are that in a meeting held in Village Bhanjal on 15th May, 1991 at 7.00 P. M. the returned candidate openly held out to the electors that in case they promise to vote for him he shall see that water taps are fitted in their houses before the actual date of poll. The electors present in the meeting assured the returned candidate that in case taps are provided and fitted in their houses before the date of poll, the entire electors of that village shall vote for him. Since the State was ruled by the Bhartiya Janta Party to which party the returned candidate belong, taps were got fitted by him in the village before the date of poll in pursuance to his promise given to the electors.

The allegation of corrupt practice of bribery made in para 15 (vii) is that in 23rd April, 1991, the returned candidate promised one Bakshi Ram of village Chhat in Tehsil Ghumarwin of providing water tap in return for his support during the election by casting his vote and for propagating

for his election campaign. On an assurance given by Bakshi Ram, the returned candidate ordered the concerned authorities and got provided water tap on out of turn basis and the said Bakshi Ram actually canvassed for the returned candidate.

It is alleged in para 15 (vii) that on 6th May, 1991, during the visit of respondent No. 1 to Bilaspur District, the residents of Ghagas met him and requested for immediate installation of public and private water taps in the village. The request was made by Durga Ram on behalf of those persons who assured that he would vote and support the returned candidate and on this assurance, the returned candidate got the public tap shifted for the convenience of Durga Ram and other residents of the village. In the last week of April, 1991, the returned candidate also visited Geharwin area and canvassed for votes. It was promised that their demands for a public tap would be granted on their support to him in the election. Lekh Ram Verma, Advocate, of the area approached the returned candidate for this purpose and he readily agreed. Consequently, the tap was installed near Sitla Mata Mandir on 2nd May, 1991. Similar promise in turn for support to the returned candidate was given by Bhagat Ram, Up-pradhan, which was also fulfilled and private water tap was installed.

It is not stated that water taps were provided by the returned candidate. The statement in these sub-para is to the effect that the returned candidate got provided the taps. Whether it was through the Government machinery or otherwise is not stated. In case, it was Government machinery then how the returned candidate got pushed the cases of villagers in getting provided the water taps is not stated. Keeping aside the objection of the learned counsel for the respondents about the names of persons deployed in getting the work executed, time and place or other such facts which might come within the ambit of particulars and not material facts, it can be noticed that material facts are not stated. There is total lack of averment as regard the alleged acts/assurance etc., as to whether the same was with the object of directly or indirectly inducing the electors to vote.

In para 15 (iii), it is alleged that about 60 to 70 electors were present in Ghanari village in Gagret Assembly segment of the constituency on 13th May, 1991 at 9.00 P. M. when the returned candidate in a meeting promised the electors that a case they vote for him he shall get sanctioned for their village road as well as for sinking rig an amount of Rs. 15,000/- to Rs. 20,000/-. The electors promised to vote for the returned candidate in lieu of this assurance and consequent upon the promise of the returned candidate and the assurance given by the electors the work of fitting the rig and construction of road was got started by the returned candidate through the Government headed by Bhartiya Janta Party. The objection to these allegations is that the same do not constitute any corrupt practice, since the name of the electors alleged to have accepted the alleged offer are not stated, nor it is stated that the work of digging of the rig and construction of road was done with the consent of the returned candidate. Name of the persons executing the work is also not disclosed. Time and period of commencement of the work is also not disclosed.

The allegation in para 15 (iv) is that 40 persons attended a meeting at Bilaspur on 6th May, 1991 at 7.30 PM addressed by the returned candidate. Old age pension to the beneficiaries in advance was assured to be got paid in case the electors were to vote for him. The persons including old age pensioners present in the meeting are alleged to have assured that in case old age pension is paid to the pensioners in advance they shall vote for him. Pursuant to the promise, old age pension in advance was got paid by the Government run by Bhartiya Janta Party, otherwise, earlier old age pension used to be distributed years after it fell due. Besides, usual objection about the identity of the old age pensioners, the amount of pension, date of release etc., it is contended that even assuming the charge to be correct, meeting the genuine grievance of the public does not amount to corrupt practice.

In para 15 (v), it is alleged that a deputation of voluntary teachers working in Hamirpur and Una Districts including three persons named therein met the returned candidate, who was then a

member of the out-going 9th Lok Sabha at 6.30 P.M. on 22nd April, 1991 at Hamirpur for putting forward their demands. During discussion, the returned candidate promised the deputationists that in case they support and give a call to the members to support the Bhartiya Janta Party he would see that their demands, especially to increase the emoluments are accepted by the State Government. Consequent to the promise by the returned candidate and assurance by the deputationists, the demands were got accepted by the returned candidate from the State Government and in return General Secretary of the Voluntary Teachers Association issued a press statement that their Association will support the Bhartiya Janta Party. It is alleged that the press statement was published in different Newspapers including Indian Express Chandigarh Edition dated 12th May, 1991. Member of the Voluntary Teachers Association voted for the returned candidate. Statement as regards material facts which is lacking is the exact place and time of the alleged meeting, nature of demands of the Association, whether or not the voluntary teachers were electors. It is contended that even assuming the averments to be correct, redressal of the genuine grievance of a section of Society cannot amount to corrupt practice.

Further allegation made in para 15 (vi) is that a deputation of about 10—15 persons met the returned candidate on 5th May, 1991 with a demand for making straight the motorable road leading from their village by diverting it from a curve. The returned candidate promised to have the needful done from Public Works and Transport Minister Shri Jagdev Chand provided the deputationists assure that they and other voters of the village will cast their votes in his favour in the ensuing Lok Sabha polls to which the deputationists agreed and assured that they shall vote for him and also secure votes of other electors. Consequent upon this, the returned candidate led the deputationists to the Transport Minister, who again, on the assurance of the deputationists to cast their votes in favour of the returned candidate and also to persuade the electors to vote in his favour and with the consent of the returned candidate agreed to meet their demand and actually got it redressed before the polls. The contention is that the material facts, such as date, time and place at which the returned candidate is alleged to have led the deputationists to the Transport Minister or time and place and where the deputationists met him as also the names of the deputationists or the person, who are alleged to have assured for procuring votes are lacking. It is further contended that assuming the averments to be correct, meeting the genuine demands of public will not amount to corrupt practice.

It is alleged in para 15 (xii) that one Harish Chander of village Dhanner approached the returned candidate on 23rd April, 1991 for the speedy construction of road. The returned candidate asked to vote for him and also canvass for vote in his favour. The said Harish Chander promised to do so. 18 gangs of labourers consisting of 200 persons were got employed to construct 1.5 km. stretch of road within a week, which was got done by the returned candidate, through the Government solely with an object that the road is completed before the actual date of poll. The road was inaugurated by the Deputy Speaker in the presence of the returned candidate, who appealed to the voters for ensuring success. The villagers promised to vote for him and actually voted for him for his having completed the road.

It is not stated that whether the Deputy Speaker appealed to the voters with consent of the candidate. Whether the assurance for the construction of road was with the object of directly or indirectly to induce voters to vote for the candidate. In what manner it is a gratification to Harish Chander is not stated. All these statements are part of material facts.

It is alleged in para 15 (xiii) that at the intervention of the returned candidate through the Bhartiya Janta Party Government prospectus in election were enhanced by the announcements by the Government for upgradation of Government Middle School, Selassi (Jhaniari) to a High School. The returned candidate had promised to get this done in exchange of votes. The guardians of the children were encouraged to get the school leaving certificates and enroll in 9th class in 2nd and 3rd week of May, 1991. Although the school has not yet been upgraded. Thus,

the returned candidate induced the voters of the area to vote for him. It is contended that the allegations are lacking. There is no averment as regards element of bargain. Who was approached or promised and with whom the bargain was struck and also the nature of the bargain. In any case, allegations as made are nothing but a pointer on the eve of election for getting the grievances of the general public redressed. In the absence of any pleadings that the returned candidate abused his power or position by utilising public revenue for conferring advantage or benefit on a particular group of people, the allegations, as made, do not amount to corrupt practice, since the instances quoted are the fulfilment of the grievances of the public.

It is alleged in para 22 (c) that the returned candidate, through his election agents, agents and other persons, with his consent, including R.R. Kaundal, Deputy Speaker of the Vidhan Sabha, on 8th May, 1991, at village Illewal in District Bilaspur offered allurements to the voters of this and the adjoining village Tarsuh, especially the Mahila voters, for voting in favour of the returned candidate and an amount of Rs. 40,000/- was announced as sanctioned for Mahila Mandal Bhawan of the area. It is further alleged that Husan Chand, Smt. Bhagwani, Abdul Karim and Gala Ram of these villages, were the victims of this corrupt practice. The precise objection raised by Shri Jain is that there is no statement of fact made in this para as to who announced and sanctioned the amount of Rs. 40,000/-. It is also not stated that the announcement and sanction of the amount was with the consent of the returned candidate. There is also no statement as regards the precise corrupt practice relateable to the persons mentioned in this para namely, Husan Chand, Bhagwani, Abdul Karim and Gala Ram. It is not ascertainable from the allegations as to whether the alleged allurement was by the election agent or by any other person with the consent of the returned candidate. In case, it is by any other person the name is not mentioned except that of R. R. Kaundal. In case the allegations are taken as an allurement on the part of R.R. Kaundal, with the consent of the candidate, it is not stated as to what was the alleged allurement.

The material facts, which on the face of it are absolutely lacking, are the consent of returned candidate, as regards the announcement and sanctioning of the amount for Mahila Mandal, who gave allurement and who sanctioned the amount. Statements of fact as regard the element of bargain are also missing.

In para 22 (d), it is stated that the returned candidate presided over a Bee Keeping Training camp inaugurated by Deputy Speaker R. R. Kaundal on 10th May, 1991 at village Berthin. A stipend of Rs. 200/- per trainee and a loan of Rs. 4,000/- each at concessional rate of 4% per annum was announced by the returned candidate. It was proclaimed on the occasion that the camp was specially held in the area since it was a strong hold of Bhartiya Janta Party and he wanted this to be proved again by the voters of the area by voting for him. The further declaration made was that the voters would also get benefit in further with similar facilities and development works. It is alleged that Smt Rup Rani and Kishori Lal of village Berthin and the other neighbouring villages and other were the subject of this corrupt practice. The statements in this para lacking material facts as contended by Mr. Jain, are the element of bargain.

Mere announcement of providing stipends and loan, without further stating, as a part of material fact, that the same was with the object of directly or indirectly inducing the voters to vote or refrain from voting at the election or the further allegation that the same was a reward will not be sufficient to bring the allegations within the definition of bribery. What type of gift, offer or promise was made to the two persons, namely, Roop Rani and Kishori Lal or what was the exact bargain struck is not disclosed.

Para 22 (e) alleges that the returned candidate and the Public Works and Transport Minister Mr. Jagdev Chand on 5th/6th May, 1991, held a meeting at village Bhumpal, in which the returned candidate declared that three Kilometres stretch of link road between Bhumpal

and Machhwan would be constructed speedily by the Public Works Department, if the voters of the area would vote for the returned candidate, to which the people agreed. The returned candidate further announced that the State Government would provide funds immediately and the road would be completed shortly. Ishwer Dass, Chint Ram and Jagdamba along with others were made subjects of this corrupt practice. It is contended that the allegations are deficient in material facts since it is not at all pleaded that the alleged promise was made with the object directly or indirectly inducing the electors to vote or refrain from voting or that it was as a reward to the electors for having voted or refrained from voting. In the absence of allegations of inducement, the link is not complete and the allegations cannot be made a triable issue in an Election Petition.

The last of the allegations in the series of allegations pertaining to bribery as corrupt practice is in para 22 (f) that the weaker sections and member so Antodya families in Gram Panchayat, Morsinghi and neighbouring villages of Ghumarwin were assured by the returned candidate during his visit to that area on 1st May, 1991 that the children of Antodya families would be paid stipend before the date of poll if they assure to vote for him. Some voters were pleased to do so. Consequently, 5 children of Gram Panchayat, Sohar, were distributed Rs. 50/- each on 5th May, 1991. Three other students of class 10th of Government Senior Secondary School, Ghumarwin were also allowed stipend of Rs. 150/- each. The submission made on behalf of the respondent is that there is absolutely no allegation that the alleged promise of providing stipend was with the object of directly or indirectly inducing the voters to vote or refrain from voting. In case any promise was made, names of persons to whom such promise was made or held out, the names of such voters, who accepted the alleged promise are not at all disclosed. Who distributed the stipend, whether it was the returned candidate or it was any other person or it was paid from any other source.

Having narrated, what has been contended by the learned counsel for the parties, about the statements made in the petition about the allegations of the corrupt practices alleged of the bribery, it has to be seen whether any or some of such allegations do contain all essential ingredients of bribery and all material facts on which the petitioner relies or in other words whether the facts stated amount to making allegations of corrupt practice giving rise to triable issues.

As has been noticed above, that whether a particular fact is a material fact or not and as such is required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstance of the case. Some of the judgements relied upon by the learned counsel for the parties pertaining to the corrupt practice of bribery deserves to be noticed at this stage, but before doing so, the well recognised principle which has to be kept in mind is that a candidate is entitled to canvass for votes. One who is in the field as a candidate is also entitled to nourish his constituency during election campaign. But election, is something which must be conducted must fairly. To arrange to spend money on the eve of election although for general good, is when all is said and done an evil practice, even it may not be a corrupt practice. The dividing line between the evil practice and corrupt practice is a very thin one. Emphasis has been laid by the Supreme Court in a number of its judgments that it should be understood that energy to do public good should be used not on the eve of election but much earlier, since slight evidence might change the said evil practice into a corrupt practice. Since election disputes are not cases at common law or equity but are strict statutory proceedings and the result of an election is not available to be interfered with lightly, it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any such petition seeking such interference must strictly comply with the requirements of law.

In **Ghasi Ram vs. Dal Singh and others** (AIR 1968 Supreme Court 1191), the Supreme Court took notice of the fact that with an election in the near future, the political party had to do acts of public nature. Discretionary grants made and money distributed from out of the discretionary funds by the Ministers amongst the voters generally to be used for the good of those for and those against the candidate were held having the effect of no doubt pushing forward the claim of a candidate but that was inevitable. Such distribution of grants was held not amounting to corrupt practice, in the absence of any clear allegation that there was any element of bargaining, directly or indirectly with the voters. The principles laid down in this judgment were later followed and applied in **Mrs. Om Prabha Jain vs. Abnash Chand and another** (AIR 1968 Supreme Court 1083), where it was held that a Minister in the discharge of his duties, may be required to do certain acts of administration including the granting of money for the upliftment of certain community but this act of Minister cannot be construed against him unless it is shown that there was bargain with the voters for getting their assistance in the election.

In **H. V. Kamath vs. C. H. Nitraj Singh** (AIR 1970 Supreme Court 211), announcement at an election meeting of party nominee of granting certain exemptions to the agriculturists and increasing Dearness Allowance to Class-III and Class-IV employees by the Chief Minister who happened to be belonging to the same party to which the candidate belonged and the allegation that such announcements were made by the Chief Minister, with the consent of returned candidate were held not amounting to any corrupt practice within the ambit of Section 123 (1) (A) of the Act.

Relying upon the earlier two judgments in **Ghasi Ram's** and **Om Prabha Jain's** cases (supra), the Supreme Court in **Dev Raj Anand vs. Bhagwandass and another** (AIR 1971 Supreme Court 241), held that the gist of corrupt practice of bribery lay in attempting to do something for those opposed to the candidate with a view to changing their votes and as a bargain for votes.

Rendering of public or social service by the Ministers on the eve of election by redressing grievances of public in relation to construction of roads or installation of water taps or closing of insanitary drains or pits, should not be interpreted either gift or offer or promise of gratification. This was the view expressed by the Supreme Court in **Bhanu Kumar Shastri vs. Mohan Lal Sukhadia and others** (AIR 1971 Supreme Court 2025) and for holding so, reliance was placed in **Ghasi Ram's** and **Om Prabha Jain's** cases (supra). It was further held that the allegation of corrupt practice is a charge of criminal nature. Provisions in the Act are intended to preserve the purity of election, but at the same time these provisions should not be subverted for the impure purposes of maligning candidate, who happen to be in the Government on the eve of election. The normal bonafide acts of persons, who happen to be Ministers have to be kept separate from abuse of the opportunities of power and resources which are not available to their opponents. It was further pointed out that ordinarily amelioration of the grievances of the public appears to be innocuous. The genuine and bonafide aims and aspirations of candidates had to be protected on the one hand and malafide abuse and arrogance of power will have to be censured on the other.

Whether tall promises made on the eve of election by a party in power with a view to help people would fall within the ambit of bribery or gratification came up for consideration before the Supreme Court in **Iqbal Singh vs. Gardas Singh and others** (AIR 1976 Supreme Court 27). Grants were made for construction of Dharamshalas for Harijans and promise was also made to issue gun licences by addressing public meetings impressing upon the voters that if they would vote in favour of the candidate, such licences would be granted. The Courts held that such grants made for construction of Dharamshalas and promise for issuing gun licences would not fall within the ambit of bribery and gratification. In para 10 of the report, it was held that:

".....The anxiety to spend the money towards the end of the financial year is also natural. If the end of the financial year also happens to be the period when an elec-

tion is going in partition power naturally bestir this to show that they are active in trying to show that they are out to help the people. They address meetings and hold out all sorts of promises. Where a large section of the people are concerned, who only get an amenity which they ought in any case to get and which they get probably a little more easily because it happens to be election time, it cannot be said that the person in authority making that promise and holding out that he would carry out many remedial measures to benefit the people was resorting to bribery or bargaining for votes. It may not amount to setting up a very high standard and it may be very desirable that whatever is done for the people should be done by persons in authority throughout the period of their office. But they naturally are more active at election time than other times. That cannot be said to amount to corruption."

Applying the ration in **Om Prabha Jain's case** (supra), the Court further held in para 14 of the report :

".....ordinarily amelioration of grievances of the public is innocuous and cannot be construed against a candidate who is a Minister but that if there is evidence to indicate that any candidate at the election abused his power and position as a Minister in the Government by utilising public revenues for conferring advantage of benefit on a particular group of people for the purpose of obtaining their votes, different considerations will arise and it may be held to be a corrupt practice within the meaning of Section 123(1). In that case it was held that in all the instances relied upon by the appellant the evidence showed that there were long standing public grievances and the Government had from time to time made suggestions and recommendations for redress of the grievances and amelioration of the condition of the people and that it could not be said that on the eve of election there was any sudden or spontaneous outburst of public activity in the shape of diverting money to win electors to the side of the Chief Minister by throwing baits or giving them any particular and specially favoured treatment. These observations apply to the case of grants for Harijan Dharamshalas."

In **Surinder Singh vs. Hardial Shingh and others** (AIR 1985 Supreme court 89), in which case a voter was found to have applied to the State Electricity Board for removal of electric wires overhanging first floor of his house and the application and demand against him to deposit a sum of Rs.1000/- with the Board were pending since long. Grievance was made by him of the overhanging wires to the contesting candidate. By exercising his influence by the candidate, the wires were got removed immediately. The required deposit was also held to have been made in the name of voter. The Court held that even if allegations made and evidence adduced were accepted as such, the same would not be sufficient to establish the charge of corrupt practice that the candidate took up the cause of the voter for early shifting of the overhanging electric wire. The Court placed reliance upon **Bhanu Kumar Shastri's case** (supra) and expanded the principle further by holding that a candidate is entitled to canvass for votes. One who is in the field to be an electorals' representative is also entitled to nourish his constituency. Amelioration of grievances of the public is innocuous and cannot be construed against a candidate. While nourishing is a legitimate activity, the Court cautioned that it is of paramount importance that nourishing should not transgress the limit so as to corrupt the electoral process. The appellant in that case was held to be already in the field as a candidate for the legislature and as such was entitled to help the people of his constituency in a legitimate way. The Court found that the evidence on record was not sufficient that the candidate had deposited the demand raised by the Electricity Board against the voter. As such, taking up of the cause of voter for early shifting of electric wire overhanging the first floor by exercising his influence over the Board would not amount to bribe.

In **Dhartipakar Madan Lal Agarwal vs. Shri Rajiv Gandhi** (AIR 1987 Supreme Court 1577), the allegations made were that the respondent candidate and his mother Smt. Indira Gandhi and their workers with the consent of both made promises through Newspapers, pamphlets etc. that voters should cast their votes in favour of the respondent for the development of constituency because his victory will ensure progress and development. On account of the speeches voters could not cast their votes impartially, instead they cast their votes in favour of Rajiv Gandhi and when both the candidate and his mother attended the meetings together, an impression was gathered that since Smt. Indira Gandhi was the Prime Minister, and her son was a candidate, there was bound to be progress in Amethi. These allegations were held only representations and no more. In the absence of any allegation of any element of bargaining in making appeal to voters with the object of directly or indirectly inducing the voters such declaration of public policy or a promise of a public action was held as not making proper allegation of corrupt practice of bargain. Relying upon the ratio in **H. V. Kamath's case** (supra), the Court held that:

“.....A general promise made by the Prime Minister or Minister to redress public grievance or to provide for public amenities for developing the constituency if elected, does not amount to corrupt practice.....”.

In **B. Rajgopala Rao and another vs. Appaya Dora Hanumanthu and others** (AIR 1990 Supreme Court 1889), speeches and advertisements made offering for the sale of dhoties and sarees and discount rates was held to be in the nature of a benefit offered to poor persons in the State. Announcement of such measures, which are intended for the benefit of any of the classes for whose amelioration the Government can normally be expected to work like the poor or the economically backward classes. These allegations, though were held bound to have financial repercussions but by no stretch of imagination amounting to making allegations of corrupt practice or bribery. In holding so the Court placed reliance upon its earlier decisions noticed above.

Similar proposition was laid and applied in a recent judgment by the Supreme Court in **Laxmi Narayan Nayak vs. Ramratan Chaturvedi and others** (AIR 1991 Supreme Court 2001), after following the ratio in **Iqbal Singh's case** (supra). It was held that giving of any gratification with the object of inducing the receiver or any other person to vote is an offence while acceptance of gratification by a person either for himself or for any other person or for inducing of any other person to vote is an offence. In other words, giving is an offence, if paid to the voter or such giving induces another person to vote. It is not giving a gratification in order that he may induce another person to vote that is an offence, whereas a receipt of a gratification in order to induce another person to vote is an offence.

Applying the ratio of the aforementioned cases to the pleadings of this case, it can be noticed that the allegations made are of a general nature alleging that the petitioner either himself or through his election agent or through other persons in his speeches promised to have the grievances of the constituents redressed by getting the water taps got fitted, having the work of sinking of rig completed, got the loans sanctioned, got the old age pension paid, got speeded up the construction of roads, got declared the upgradation of Schools, got the demands of voluntary teachers as regards increase in emoluments accepted, got sanctioned amount of Rs.40,000/- for construction of Mahila Mandal Bhawan, got sanctioned stipend and loans etc. Such redressal of grievances on the touch-stone of ratio in aforementioned judgments, particularly that of **Surinder Singh's case** (supra) in itself would not amount to bribe since respondent, a candidate is entitled to canvass for votes. He being in the field was also entitled to nourish his constituency. Amelioration of grievances of the public is innocuous and cannot be construed against the candidate. There is no allegation made in the entire petition that election process was made corrupt by illegitimate means. Nourishing is a legitimate activity. Helping the constituent in a legitimate way is not prohibited. It is nowhere alleged in the petition that the

petitioner himself paid any amount or himself offered any gratification. In case long standing demands of the members of public were already pending as regards of fitting of water taps, sinking of rig, sanctioning of loans, payments of arrears of old age pension, increase in emoluments of voluntary teachers, construction of roads etc., any help rendered by getting those grievances met would not amount to bribery. Addressing meetings and holding out all sort of promises, where a large section of public is concerned, to get the amenities provided or getting expedited the work of completion of such works, which they ought in any case would get, which, they got probably, a little more easy and early because it happened to be in an election time, It cannot be said that the person in authority making a promise and holding that he would carry out remedy and measure to benefit the public was resorting to bribery or bargaining for votes.

Without considering the other objections raised on behalf of respondent No. 1, such as non-mentioning of exact time, place, names of persons, the manner of holding out promises, at whose instance, whether with the object directly or indirectly inducing an elector to vote, the names of persons who in turn accepted the alleged promises, it can be said that allegations as a whole in each of the aforementioned sub-paras do not set out essential material facts which it was necessary for the petitioner to allege. In the absence of stating the material facts with clarity and without giving a clear picture of the charges alleged and making half hearted attempt with a view to make out a fishing or roving enquiry, it cannot be said that the aforementioned allegations in the petition can be set down for hearing on merits. No corrupt practice can be inferred from reading one sentence here and other sentence there. Each instance in itself, making out a charge of corrupt practice must make out statement of material facts. Words can neither be imported nor implied to search out or infer the intention of the petitioner. As such on reading these portions of petition, allegations made, as such on the face of it, do not disclose any triable cause of action.

Undue Influence:

The allegations made in the petition seeking to set aside the election on the ground of the corrupt practice of undue influence are to be found in paras 16 (i), (ii), (iii) & (iv) and are to the following effect:

Accompanied with Jagdev Chand, Public Works Minister; Babu Nandu Ram and Tota Ram of village Dangar, the returned candidate visited the Harijans colony on 16th May, 1991 at 7.30 p.m. Jagdev Chand in the presence of a returned candidate threatened the electors of the Harijan locality that in case they did not vote for the returned candidate, they will have to face dire consequences and also threatened that their entire locality shall be burnt and they shall not be allowed to live in the area. This happened in the presence of and with the consent of returned candidate.

In presence of and with the consent of returned candidate. R. R. Kaundal, Deputy Speaker of Vidhan Sabha and also representing Ghumarwin constituency, during elections in May, 1991 in village Jhabola thrice threatened the voters that in case the voters did not cast their votes in favour of the returned candidate, no development works shall be undertaken nor any attempt to redress their grievances shall be made.

During the last week of April, 1991 R. R. Kaundal, Deputy Speaker with consent and in presence of the returned candidate pressed upon Nikki Devi of village Gharan to cast her vote in favour of returned candidate and also to work for him. Nikki Devi refused to do so. R. R. Kaunda threatened Nikki Devi of dire consequences and as a result thereof and to take a revenge he entered into litigation with Nikki Devi.

Workers of Bhartiya Janta Party alongwith the election agent of returned candidate and Kashmiri Lal Joshi, sitting M. L. A. of Bhartiya Janta Party from Santokhgarh Assembly Segment in village Polian Beet instigated and indulged in stone hurling on Harijan voters who has gone to Polian Beet Polling Station to cast their votes. In this incident, Smt. Rani, Harijan woman was seriously injured. This act terrorised the electors.

In the background of these allegations made in the petition, it has to be seen as to whether proper averments have been made and requirements of law met.

Undue influence in order to constitute a corrupt practice, requires to be pleaded as essential facts of direct or indirect interference or attempt to interfere with the free exercise of electors rights on the part of candidate, his election agent or any other person with the consent of candidate or his election agent. Threatening any candidate or elector or any other person in whom a candidate or elector is interested with injury of any kind or inducing at or attempting to induce a candidate or elector that he or any other person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure will be deemed to interfere with the free exercise of electoral rights. Details and nature of undue influence or direct or indirect interference are required to be pleaded in order to complete the allegation of this charge. Ingredients of the two are different, they are required to be pleaded specifically. Details are also required to be furnished separately to give a complete picture of the cause of action.

In the four sub-paras aforementioned, no doubt allegations are there that in three cases the returned candidate was present when Jagdev Chand and R. R. Kaunda are alleged to have given the threats. But whether the actual holding out of threats, which amounts to interference with the free exercise of any electoral rights on the part of Jagdev Chand and R. R. Kaunda was with the consent of the returned candidate is not at all pleaded. What was the consent or its nature is not pleaded. In the first case, to whom the threat was held out, his name is not shown. In the absence of the name of the person on whom the alleged undue influence is alleged to have been exercised, no proper averment can be said to have been made. In sub-paras (ii) and (iii) whether the actual threat was with the consent of returned candidate is not alleged. In the case of Niki Devi, the further allegation that on her refusal, she was threatened with dire consequences is not qualified with further allegations of the returned candidate's consent. Similarly, the consent on the part of the returned candidate or election agent about the hurling of stones is completely missing.

In *Baburao Patel and others vs. Dr. Zakir Hussain and others* (A. I. R. 1968 Supreme Court 904), it has been held that the definition of undue influence in the Act is more or less in the same language as in Section 171-C of the Indian Penal Code except for the addition of the words 'direct or indirect' in the Act to indicate the nature of interference.

In order that a pleading may be sufficient to make out a case of undue influence, it must set out full particulars of it under the provisions of Section 83 (1) (c) of the Act, which provision is comparable with order VI, Rule 4 of the Code.

In *Dr. Lakhi Prasad Agarwal vs. Nathmal Dokania* (A. I. R. 1969 Supreme Court 583), it was held that Section 83 (1) (c) read with Order VI Rule 4 of the Code and Section 123 (2) of the Act makes it obligatory on a party setting up a case of corrupt practice by exercise of undue influence, as suggested, to give full particulars thereof by stating *inter alia* who attempted to induce electors, in what manner, such attempt was made, who was induced or whether such inducement was with the consent of the candidate.

In *Lalit Kishore Chaturvedi vs. Jagdish Prasad Thada and others* (A. I. R. 1990 Supreme Court 1731), it was held that undue influence is an inference which arises on facts pleaded. Mere averments that undue influence was exercised in the absence of precise facts, namely, the nature of such

influence, the persons on whom it was exercised, the time and place of it, the pleadings fell short of requirement of law. Such allegations were held to be mere fishing and roving and not being sufficient compliance of Section 83 (1) (c) of the Act. Viewing in the light of the aforementioned observations in *Babu Rao Patel*, *Lakhi Prasad Agarwal* and *Lalit Kishore Chaturvedi's* cases (supra), there is no manner of doubt that the pleadings in para 16 (i) to (iv) fall short of the requirement of law and do not make out a complete charge of corrupt practice by exercise of undue influence.

Hiring or Procuring of Vehicles for the Free Conveyance of Voters :

The necessary ingredients which are required to make out a complete charge of corrupt practice u/s 123 (5) of the Act are:—

1. Hiring or procuring of a vehicle by a candidate or his agent or by any other person with his consent ;
2. Hiring or procuring of the vehicle must be for conveyance of the voters to and from the polling station; and that the
3. Conveyance of an elector is free from any charge.

In *Dhartipakar Madan Lal Agarwal's case* (supra), it was held that all the three ingredients must be pleaded to make out the case of corrupt practice. In case any of the three ingredients is not pleaded there would be no pleading of corrupt practice. As a part of material facts, the petition must contain allegations as to when the vehicle was hired or procured, by whom, and at what price or that the said vehicle in furtherance of hiring or procuring was for free conveyance of electors to and from Polling Stations.

Allegations under this head are to be found in para 15 (xiv) and 22 (a) and (b) of the petition and are to the following effect:—

- (a) Hiring and procuring taxi No. H.P. 024-0220 owned by Bhagat Ram by the returned candidate for free conveyance of electors to and from Panjgain and in Nichli Bhateri Polling Stations. Prem Kumar of Village Bagaon was carried to Panjgain Polling Station. Bhagat Ram, Anant Ram and Kirpa Ram were also carried in the vehicle. Roshan Lal and Sunder Ram of Khetar and Sunko Ram of village Naloha were carried in this vehicle to their Polling Stations Bhater and Barmana. Though the allegations made in this sub-para (xiv) of para 15 can be said to be containing the first two essential requirements, but the third essential ingredient, namely, that conveyance of the electors was free from any charge is not at all made.
- (b) From Driver Manjit Singh of Gagal Taxi No. H. P.-02-0979 was hired by respondent No. 1 on the polling day, in order to carry voters to Polling Stations, Nadaun, Jalar and other neighbouring Polling Stations. Santosh Sandhu of Gagal and others were carried free. The taxi was also used to carry the voters from Kalur village to Polling Stations Gurehar. Kikar Singh was one of them. It is not alleged that Santosh Sandhu was carried in this taxi to any polling station. Similarly, it is not alleged that Kikar Singh of Kalur was provided the conveyance free of charges. In the absence of these two vital links, being the essential ingredients, charge of corrupt practice cannot be said to have been legally alleged.
- (c) For the free carriage of voters from Olihnda to Polling Station Gawal-Thai, taxi, No. P. B.07-1503 was hired by respondent No. 1 on 20th May, 1991. Voters were carried free in order to enable them to cast their voters in favour of respondent No. 1. It is alleged that Faquir Chand, Kishori Lal and others were 'offered' free carriage to and from Polling Station on the date of Polling. Suffice it will be to say that there is no allegations that Faquir Chand, Kishori Lal and others were actually provided conveyance and were carried

in the vehicle free of charge. The allegation is that they were 'offered' free carriage. Word 'offer' cannot be construed to mean 'provided'. Mere offer is not sufficient unless the vehicle was used as such for conveying, free of charge, the voter to and from Polling Stations

Applying the ratio of *Dhartipakar's case* (supra), in the absence of pleading all the three essential ingredients of corrupt practice, allegations made in paras 15 (xiv) and 22 (a) and (b) do not make out a proper charge of corrupt practice within the meaning of Section 123 (5) of the Act.

Obtaining or Procuring any Assistance from any person in the service of Government :

This head of corrupt practice has been highlighted in the petition by mentioning various allegations in paras 15 (ix), (x) and (xi), 171 (i) and 22 (g), which *inter alia*, say:—

- (a) While Purshotam Das, who was serving as a member in the Armed Forces of the Union in the rank of Subedar Major on leave was appointed by the returned candidate through his election agent as a polling agent at Polling Station, Hamirpur. Thus, respondent No. 1 obtained and procured his position for the furtherance of the prospects in election.
- (b) Surinder Verma, a Pump operator at Nadaun in the service of the Government of Himachal Pradesh was appointed as a polling agent of the returned candidate and actually worked as such on 20th May, 1991.
- (c) On 19th May, 1991, the returned candidate visited Marottan Polling Station in Ghumarwin Assembly Segment and asked G. C. Azad, who was to act as Presiding Officer on the Polling day, for assistance for the furtherance of the prospects of his election by casting votes in his favour. On 20th May, 1991, Shri Azad got about 19 votes cast in favour of the returned candidate fictitiously.
- (d) Assistance of Rikhi Ram Kaundal, Deputy Speaker of the Vidhan Sabha was procured by the returned candidate by appointing him as the counting agent at Bhaspur.
- (e) Bodh Raj Jain, a postal clerk of Ambala Cantt. Railway Station, during his leave acted as polling agent of the returned candidate at Bafra Polling Station.

In ground (b), (d) and (e) aforementioned, there is no such statement of fact made that the alleged assistance was 'for the furtherance of the prospects of the candidate'. In ground (c) also, it is not stated whether assistance of G. C. Azad was actually procured for the furtherance of the prospects of the candidate. In para 15 (x) and para 22 (g), there is no mention that whether the assistance was obtained or procured by the candidate himself, or by his election agent or by any other person with the assistance of the candidate or his election agent. Thus, in so far as the last four grounds are concerned, on the face of it, the allegations are vague. What to speak of material facts even the barest minimum allegations are not made.

In so far as first ground contained in para 15 (ix), it can be seen that the allegations are that the election agent of the returned candidate appointed Subedar Major Purshotam Das as Polling agent at Polling Station, Hamirpur and thus the returned candidate having obtained and procured the assistance for the furtherance of the prospects of election has committed corrupt practice as defined in Section 123 (7) of the Act. These allegations in themselves are not at all sufficient without further alleging and making statement as part of the material facts as to in what manner it furthered the prospects of the candidate's election. So far as the first part is concerned, there is no manner of doubt that material facts stated is the obtaining or procuring by the election agent of the candidate, assistance from a member of armed forces of the Union but one of the vital links, in order to make out a complete charge within the ambit of Section 123 (7) is missing. It is well settled that mere reproduction of the words of the Section, without setting forth the material facts is not sufficient.

In order to allege that assistance was for the furtherance of the prospects of the candidate's election, it was necessary and essential to plead in clear terms as to how the assistance was obtained and procured and in what manner, it was in furtherance of the prospects of the candidate's election.

Likewise, allegations in para 15 (ix), (x), (xi), 17 (i) and 22 (g) cannot be said to be making out a complete charge since essential facts which would cloth the petition with the cause of action and which will call for an answer from the returned candidate are not pleaded. In what manner assistance was procured and in what manner the alleged assistance was in furtherance of the prospects of the candidate's election are totally missing.

There are four different heads of corrupt practices (a) obtaining, (b) procuring, (c) abetting and (d) attempting to obtain or procure assistance. As such, the material facts which must be alleged should be as to whether the candidate obtained or procured, or abetted or attempted to obtain or procure any assistance other than giving vote. On a close reading of the aforementioned paragraphs of the petition one will search in vain to find out as to whether the allegations against respondent No. 1 are in regard to one or under all the heads. Similar allegations were held to be completely vague and disclosing no cause of action in *Hardware Lal vs. Kanwal Singh* (A. I. R. 1972 Supreme Court 515) in para 18 of the judgment by observing :

“.....Reading paragraph 16 of the election petition one will search in vain to find out as to whether the allegations against the appellant are in regard to the assistance under both heads or either head from each of the six persons mentioned there. One will speculate as to whether the appellant obtained and procured or attempted to obtain and procure assistance from each or some of the persons mentioned there. Obtaining or procuring or attempting to obtain or procure assistance are separate and independent forms of corrupt practice. One will guess as to whether the allegations are that the appellant committed all or one or more of the corrupt practices of obtaining, procuring, attempting to obtain or procure assistance from each of the persons mentioned there. One will also conjecture and hazard as to what assistance was obtained or procured or attempted to obtain or procure from each of the persons mentioned there, for the furtherance of the prospects of that candidate's election. The giving of vote is not within the mischief of corrupt practice. It cannot be understood from the petitioner whether the giving of vote is the assistance alleged. It is, therefore, apparent that the appellant who was charged by the election petitioner with corrupt practice should be told in the election petition as to what assistance he sought. The type of assistance the manner of assistance, the time of assistance, the person from whom assistance, is sought are all to be set out in the petition. There is no allegation in the petition about the actual and the specific assistance with which the appellant can be charged in violation of the provisions of the Act. Nor is there any statement in the election petition describing the manner in which the prospects of the election were furthered and the way in which the assistance was rendered. The allegations against the appellant were in relation to six persons. Therefore, it was essential and imperative for the election petitioner to set out with exactitude and precision the type of assistance as also the manner in which assistance was obtained or procured from each person. The time, the date and the place of the assistance were also required to be set out in the particulars. Thus it had to be alleged as the material facts as to what assistance the appellant obtained or procured or abetted or attempted to obtain or procure from which person and how the assistance furthered the prospects of the appellant's election. If all the four variants and ingredients were to be charged against the appellant these had to be set out as statements of material facts in relation to each person.”

The petition merely citing the bare words of section cannot be said to disclose a cause of action, where the allegation is the obtaining or procuring of assistance, unless the exact type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the candidate are alleged as statement of fact, pleadings would be incomplete lacking material facts.

In para 18 of the judgment in *Azhar Hussain's* case (supra), similar allegations made were held to be lacking in material particulars. The court making reference to the averments and placing reliance in two earlier judgments held :

“The averments contained in paragraph 4 pertaining to Ground No. 1 do not satisfy the test prescribed in *Manubhai Amarsey vs. Popatlal Manilal Joshi* (A. I. R. 1969 S. C. 734) and *Hardweri Lal vs. Kanwal Singh* (A. I. R. 1972 S. C. 515) (supra). The most important test which remained unsatisfied is as regards the omission to satisfy in what manner the assistance was obtained and procured by the election-candidate for promoting the prospects of his election. All that has been stated is :

“His services were procured and obtained by the respondent, his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent's election.....”

It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these essential facts which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded' as per the law laid down in *Manubhai Nand Lal Amarsey vs. Popatlal Manilal Joshi* (A. I. R. 1969 S. C. 734) (supra) it cannot be said that the petition discloses a cause of action in regard to this charge. In the absence of these material facts and particulars the Courts could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition.....”

Applying the ratio in *Azhar Hussain's* case (supra), there is no manner of doubt that under the aforementioned head also material facts are not stated and allegations to that effect cannot be set down for trial.

Another ground alleged in para 10 of the petition for declaring the election of respondent No. 1 void is that at the time of scrutiny, an objection was raised by the petitioner to the candidature of Rattan Singh Dhadwal, respondent No. 7, to the effect that he was disqualified for being chosen as a member of either house of the Parliament, since he was an employee of Government of India, thereby holding office of profit. It is alleged that respondent No. 7 was in the service of the Government of India at Branch Post Office, Karoa, but this objection was not taken note of. Nomination was improperly accepted as a result of which, in so far as it concerns the returned candidate, result of election has materially been affected.

Mr Jain, appearing for respondent No. 1, has raised an objection that pleading of these facts do not disclose any cause of action and the petition cannot be taken to trial since material facts have not been pleaded. In order to make out a complete ground seeking to set aside election within the ambit of Section 100 (1) (d) (i), it is necessary for a petitioner to plead all material and essential facts that the result of the election, in so far as it concerns the returned candidate, has been materially affected by the improper acceptance of any nomination. Mere reproduction of the wording of the section alone will not suffice but in order to make out a complete charge particular defect has to be pleaded. In the absence of any particular defect being pleaded, it will not be permissible, in case the petition is taken to trial to receive any evidence in case such a defect would constitute a material fact.

At this stage the criteria would be that in case averments made in the petition are on the face of it accepted as true, can a verdict be recorded in favour of the petitioner. The petitioner has nowhere pleaded as to what was the post held by Rattan Singh Dhadwal. In the absence of disclosing the nature of the post held, it will not be possible for the Court to draw any inference that Rattan Singh Dhadwal was holding any office of profit as per the requirement of Article 191(1)(a) of the Constitution. In addition thereto from the result sheet, Annexure P-1, attached with the petition, it is apparent that said Rattan Singh Dhadwal polled 908 votes. Votes polled in favour of the petitioner are 202232 and by respondent No. 1, the same were 205970. The difference as noticed above is of 3738 votes. In case by the improper acceptance of the nomination of Rattan Singh Dhadwal had the effect of only 908 votes being polled in his favour, it is not pleaded in any part of the petition as to how the result of election in so far as it concerns the returned candidate has been materially affected by improper acceptance of nomination.

In *Mithilesh Kumar Sinha vs. Returning Officer for Presidential Election and others* [J. T. 1992 (5) S. C. 479], the constitution Bench held that in the absence of any defect showing the nature and character of the ground for improper acceptance of nomination being pleaded, such a ground made out for seeking election to be set aside does not amount even *prima facie* to making out a case for the trial of election petition. It would have been necessary for the petitioner in the instant case, firstly, to point out the nature of posting of the Rattan Singh Dhadwal, as also the manner in which the result, in so far as it concerns the returned candidate has been materially affected. In the absence of these material facts, no *prima facie* case has been out and the petition does not disclose any cause of action for trial under section 100 (1) (d) (i) of the Act.

In paras 19, 20 and 21, the corrupt practices alleged to have been committed either by the returned candidate or his election agent or by other persons with the consent of the returned candidate and the election agent are the one defined under sub-section (3) and (3A) of Section 123 of the Act, namely, appeal to vote or refrain from voting on the ground of religion, race, caste, community or language and the promotion of feelings, enmity or hatred between different classes of citizens on the said grounds. The pleadings to this effect in various paras deserve elaborate scrutiny in order to understand the clear meaning thereof and also to find out as to whether all or any one of them do disclose any cause of action so that petition may set down for trial.

It has been alleged that in view of the ensuing 10th Lok Sabha Elections, political parties like Bhartiya Janta Party and other organisation such as Vishwa Hindu Parishad and Bajrang Dal exploited the unfortunate controversy, which has arisen regarding the place of worship at Ayodhya commonly known as Ram Janam Bhumi-Babri Masjid issue. Bhartiya Janta Party, which had sponsored the returned candidate from the Hamirpur Parliamentary Constituency, suddenly decided that it is the only party which fight for the rights of the Hindus. While this party tried to exploit the aforementioned issue at the national level, the other political organisations, namely, Bajrang Dal tried to exploit the issue of protecting Hindu religion in northern States. The Bhartiya Janta Party in the erstwhile Lok Sabha had only 88 members and Shri L. K. Advani was its leader in the house, who also happened to be its President. In connivance with Vishva Hindu Parishad, a purely religious organisation, which propagates for Hindutwa and Hindutwa, the Bhartiya Janta Party campaigned and organised Rath Yatra to Ayodhya for the alleged construction of Ram Mandir. Bhartiya Janta Party was propagating through elections by raising the issue of Ram temple for which purpose it sought the cooperation of Vishva Hindu Parishad for securing votes for their party candidate. It is further alleged that the returned candidate and his agents with his consent promoted feelings of enmity and hatred between different classes of citizens on the grounds of religion for the furtherance of the election of the returned candidate and also prejudicially affected the election of the petitioner and published an appeal to the electors of the constituency. The returned candidate and his agents, with his consent also on the ground of their religion and caste appealed to the electors of the constituency to vote for him and to refrain from voting for the petitioner.

These averments, which, if taken in isolation, without taking into consideration what is stated in sub-para (a) to (i) of para 19 (ii), on the face of it, allege nothing except merely reproducing bare provisions of sub-section (3) and (3A) of Section 123 of the Act. The material facts, according to Pt. Om Parkash, learned counsel for the petitioner are clearly stated and spelled out in sub-para (a) to (i) of para 19 (ii) as also in sub-para (i) to (vii) of para 20 and para 21. It is further contended that the material facts pleaded and stated in these paras do make out triable issues and the petition cannot be said to be not disclosing any cause of action. In case some particulars are lacking, the same can be supplemented by calling upon the petitioner to supply those particulars, but the averments made in these sub-para are not lacking in material facts. Shri Jain has pointed out number of deficiencies in material facts. Before considering the so-called deficiencies, it would be profitable to refer to the requirements of law, under the two separate provisions.

Under sub-section (3) of Section 123 of the Act, appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent, to vote or refrain from voting, on the ground of "his religion, race, caste, community or language" for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate is deemed to be a corrupt practice for the purpose of the Act.

Under sub-section (3-A) of Section 123, it is the promotion or attempt to promote feeling of enmity or hatred between different classes of citizens by the candidate, his election agent or by any other person with consent of the former for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate on the ground of religion etc. is the corrupt practice.

From the bare reading of the provisions, what can be gathered is that in case the appeal is imputed to be by a person other than the candidate or his election agent, it should be with the consent of the candidate or his election agent. Consent has been held to be the life-line to link up the candidate with the action of the other person which may amount to corrupt practice and unless it is specifically pleaded, the candidate cannot be charged for the action of others. There is a clear distinction between consent and connivance, which has been pointed out in *Charan Lal Shahu's* and *Surinder Singh's* cases (supra). In addition to the clear and specific pleading of consent as a part of material fact, what further facts are required to be pleaded as held in *Nihal Singh vs. Rao Birendra Singh and another*, 1970 (3) Supreme Court cases 239, are the dates, the places of each meeting, the names of the persons and the contents of appeal. In case, the allegations are based upon the pleadings of appeal having been made by printing, published and circulating pamphlets in that case, in accordance with the ratio of judgment in *Azhar Hussain's* case (supra) particulars of the persons, who printed, published or circulated the pamphlets, when, where and how it was circulated and which facts indicate the candidate's consent to such distribution are material facts.

It is alleged that during the election from 23rd April, to 20th May, 1991, a hand-bill purported to have been issued by the Vishva Hindu Parishad, Palampur, was circulated amongst the voters, a copy of which has been annexed to the petition as Annexure P-5. It is alleged that through this pamphlet, an appeal was made to the voters to vote or refrain from voting any person on the ground of his religion and also it promoted and attempted to promote feelings of enmity and hatred between different classes of citizens on the ground of religion. The hand-bill was duly circulated with the consent of the returned candidate and his election agents for the furtherance of the prospects of the election of the candidate and for prejudicially affecting the election of the petitioner and this hand-bill vastly influenced the voters. It is further alleged that Bhartiya Janta Party had contested the election in collaboration with Vishva Hindu Parishad, which fact was not disputed by the returned candidate at the relevant time and, as such, he is now estopped from disputing it. These averments, on the face of it cannot be said to be

disclosing any cause of action and in any case not meeting the requirements of law, as laid down in *Nihal Singh's* case (supra), which was followed in *Azhar Hussain's* case. In para 38 of the judgment in *Azhar Hussain's* case (supra), the Supreme Court in clear terms laid down the said requirement by saying that:

“In view of the doctrine laid down in *Nihal Singh's* case [1970(3) SCC 239] (supra) as early as in 1970, the High Court was perfectly justified in taking the view that no cause of action was made out. For, in the absence of material particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and which facts went to indicate the respondent's consent to such distribution the pleading would not disclose a cause of action. There would be nothing for the respondent to answer and the matter would fall within the doctrine laid down in *Nihal Singh's* case (supra).....”

On 22nd April, 1991, it is alleged that the returned candidate appears to have addressed the Press Conference titled as ‘meet the press’, which was published in *Jansatta* Chandigarh on 24th April, 1991, wherein it was mentioned that the returned candidate and his party would be contesting the election on the basis of Hindu and Hindustan. copy of which is Annexure P-6. It is alleged that the publication is widely read and circulated, which was never contradicted by the returned candidate and he acquiesced in the publication. In this sub-para (b) of para 19 (ii), the facts pleaded are that the returned candidate appealed to the voters to vote in his favour and to refrain from voting in favour of the petitioner “on the ground of religion”. Taking these averments, as they are, on the touch-stone of the proposition of law propounded in *Kanti Prasad Jayshanker Yagnik vs. Purshottamdas Ranchhoddas Patel and others* (AIR 1969 Supreme Court 851), do not amount to making of an allegation of corrupt practice. The majority judgment by Justice Sikri speaking for himself and Justice Bachawat J., ruled that there is no bar to a candidate or his supporters appealing to the electors not to vote in favour of a party in the name of religion. Section 123 (3) bars an appeal by a candidate or his agent or any other person with the consent of candidate or his election agent to vote or refrain from voting any person on the ground of ‘his religion’ which term was held to mean ‘the religion of the candidate’. Applying the ratio to the pleadings set out in this sub-para of the petition, there is no averment in this sub-para that the so called appeal was made by respondent No.1 on the ground of ‘his religion’.

It has been pleaded that the General Secretary of Hamirpur Parliamentary Central Office, Hamirpur, of Bhartiya Janta Party got a pamphlet published with the photograph of respondent No.1, wherein an appeal was made to the electors to vote for the returned candidate, who had been sponsored by the Bhartiya Janta Party and assured the construction of Ram Mandir. This publication was circulated and on account of the assurance of construction of Ram Mandir, it had the effect of several voters to vote for the returned candidate and refrain from voting for the petitioner. It is further averred that Lord Rama is considered to be the incarnation of God by all Hindus, who have got immense faith in Lord Rama. In this sub-para (c), there is absolute lack of the pleadings of the consent which being the life line to link up the returned candidate with the so-called action of the General Secretary of Central Office of Bhartiya Janta Party. In the absence of pleading of consent as a part of material fact, allegation of corrupt practice within the ambit of Section 123 (3) of the Act are not complete. In case it is taken up to be a corrupt practice committed by the General Secretary in the interests of the returned candidate, in that case the further requirement of Section 100(1) (d)(ii) in not impeaching the material fact that the result of election in so far as it concerns the returned candidate has been materially affected is fatal. There is also absolute lack of the other pleadings, such as, when the hand-bill was published, who published it, where, when and in what manner it was circulated amongst voters and by whom. These are all part of essential requirement in order to charge respondent No.1 with the commission of corrupt practice or on the basis of which an election may be declared as void.

In sub-para (d) of para 19(ii), it is averred that the workers of Bhartiya Janta Party, in order to arouse communal passions were screening video films on Ayodhya, secretly. The petitioner had sent a telegram on 10th May, 1991 to Shri T.N.Seshan, Chief Election Commissioner and Shri Attar Singh, Chief Electoral Officer, Himachal Pradesh. These averments also do not advance the petitioner's case any further, since it does not fall in any of the categories of the corrupt practices defined in Section 123 of the Act. It is not a ground on which election can be declared void under Section 100 of the Act. Moreover, the nature of video films alleged to have been screened and in what manner the same aroused communal passion, when and where the same were screened and by whom or whether it was with the consent of the returned candidate is not at all pleaded, being part of material facts.

It is alleged that Bhartiya Janta Party arranged a tour of Sadhvi Ritambhara belonging to Vishva Hindu Parishad to Himachal Pradesh and a news-item to this effect was published in Jansatta, Chandigarh on 11th May, 1991. Consequent to this news-item, Sadhvi Ritambhara did visit the State and with regard to her tour an advertisement, purported to have been issued by the Vishva Hindu Parishad, was published on 11th May, 1991 in Daily Punjab Kesri. From these averments, made in sub-para (e) of para 19 (ii) it is alleged that Sadhvi Ritambhara came to propagat in favour of Bhartiya Janta Party candidate. These averments also on the face of it, do not amount to committing of any corrupt practice the on part of the candidate.

Two advertisements were published by the Bhartiya Janta Party on 14th May, 1991, with regard to the tour programme of Atal Bihari Vajpayee, copies of which have been annexed as Annexures P-11 and P-12 with the petition. It is alleged in sub-para (f) of para 19 (ii) that through these advertisements an appeal was made on the basis of religion to seek votes and to cooperate with the said party. Advertisements were inserted in the Indian Express and the Vir Pratap, Jullundur, which was widely read in the constituency and by the electors. On account of this religious appeal, the electors were swayed to vote for the returned candidate and refrained from voting for the petitioner. As noticed above, the appeal in order to be an offending one has to be on the ground of 'his religion', namely, religion of the candidate. There is no averment in this para that the appeal was made on the candidate's religion or that such an appeal was made, advertisement was published and circulated with the consent of the returned candidate. Who published the advertisements or circulated the appeal is not stated. In case the allegations can be said to be falling in Section 100 (1) (d) (ii) of the Act of corrupt practice committed in the interest of the returned candidate, there is further lack of averments that the election, in so far as it concerns the returned candidate has been materially affected. Averments, as such, are lacking in material particulars.

In sub-para (g) of para 19(ii), it has been alleged that a meeting was held on 16th May, 1991, in the compound of Government college, Bilaspur, organised by Bhartiya Janta Party and Vishva Hindu Parishad, with the consent of the returned candidate by Sadhvi Ritambhara. Vishva Hindu Parishad, Bilaspur had circulated a hand-bill with regard to the tour programme of Sadhvi Ritambhara and of the public meeting at Bilaspur. One of the hand-bill is annexed as Annexure P-13 to the petition. It is alleged that the hand-bill appealed the electors to cast the votes in favour of such candidate and party who propagates and talks about the betterment of Hindus, which were none else, except the Bhartiya Janta Party and the returned candidate. By making these allegations, it is alleged that by circulation of Annexure P-13, an appeal was made to the electors to vote for Hindu religion to which the returned candidate belongs and it also refrained the electors from voting for the petitioner, who propagated secularism. In this sub-para, the allegation made is as regards appeal through publication of hand-bill on the ground of Hindu religion, which is also the religion of the returned candidate but still material facts, which ought to have been alleged in order to make out a complete charge of the corrupt

practice alleged, which are lacking, are about the consent of the candidate that the handbill was published, printed or circulated with the consent of the candidate. It is also not alleged as to in what manner the same was published, when and by whom. The allegation of the consent in this sub-para is about the holding of the meeting and not of publication through which appeal to the electors is stated to have been made on the ground of religion. Even in case the allegation or averments relating to the circulation of the hand-bill by the Vishva Hindu Parishad, Bilaspur, be taken to be making religious appeal in the interest of the candidate, in that case, the requirements of Section 100 (1) (d) (ii) are also lacking, since it is not averred that the result of the election, in so far as it concerns the returned candidate has materially been affected due to the making of appeal by the Vishva Hindu Parishad. How and in what manner it affected the prospects is also not alleged.

According to the submissions made by the learned counsel for the petitioner, the averments made in sub-para (h) of para 19 (ii) of the petition are of a very serious nature, which would fall within the definition of corrupt practices defined both in sub-section (3) and (3-A) of Section 123 as an appeal to the electors to vote on the ground of his religion as also an attempt to promote feelings of enmity and hatred between different classes of citizen on the ground of religion, for the furtherance of prospects of the election of respondent No.1 and for prejudicially effecting the election of the petitioner. It is contended that the appeal was made by Sadhvi Ritambhara with the consent of returned candidate in a speech, which was tape recorded and the transcript thereof is placed on record as Annexure P-14. All essential and necessary averments have been made so as to allege the commission of corrupt practice. The learned counsel for respondent No.1 has pointed out numerous lacuna in the averments so made and has contended that the pleadings are deficient in material particulars and the same are so vague that it has left a wide scope to the petitioner to adduce evidence in respect of the essential and basic requirements. Pleadings in fact are so vague and wanting essential particulars that the same cannot be said to be spelling out a complete cause of action. On account of failure to mention the material facts, the Court would not look into such a charge.

It is alleged that a public meeting was held by Sadhvi Ritambhara on 16th May 1991 in Government College Grounds, Bilaspur with the consent and in presence of respondent No.1. The speech (transcript Annexure P-14) so made in the said meeting is nothing except an attempt to promote feelings of enmity and hatred between different citizens on the ground of religion. It is further alleged that the tape along with a video cassette was displayed by respondent No.1 through his election agent and other persons with his consent in the entire constituency which had the effect of arousing the sentiments of electors and promoting the feelings of enmity and hatred between Hindus and Muslims. It is alleged that the speech was made for the furtherance of the prospects of election of the returned candidate and for prejudicially affecting the election of the petitioner.

In this sub-para, the material facts as to what was the actual speech or whether in fact it amounts to an attempt to promote feelings of enmity and hatred have not been stated. There is a reference in this para to the transcript of the speech which was tape recorded which transcript has been annexed as Annexure P-14, as such, it is necessary to refer to the said Annexure, since it forms an integral part of the petition. The Annexure is in Hindi, its translation is Annexure P-14/A. During the course of arguments, learned counsel for the petitioner read out verbatim the document and high-lighted a few portions thereof which may be reproduced as under :-

“.....Our agitation is not limited to demolish or construct a building. We are not fighting for one bigha of land, for Sri Ram Janambhoomi. But for a wonderful glorification of our religion, for the pure refinement of our culture, for the elevation of Indianness, for launching a movement for national consciousness, for the

recognition of our identity, that is for the removal of all obstacles in achieving the goal of 'Hindi, Hindu Hindustan', we shall not stop till Ram temple is constructed.

The Mandal issue was raised to create a split in Hindu castes. They thought that the Hindus would be divided and split on the issue of reservation and their attention will be diverted from the issue of Rama temple. By and by the problem will be solved. But this thinking proved futile, dirty and contemptible. We shall set fire to such misconception. We shall definitely construct the Rama temple and my dear Hindu brothers do not split the Hindu castes, on the issue of reservation. If the Hindus get divided among themselves, then the signposts of Hindu unity will be blurred.....Rama is the God of weak and down trodden. He is the life of *Kewats, Nishats and Dhobis*. One who is not a true devotee of such a 'Rama' has anything, except Hindu blood. We shall surely search such persons. We shall definitely construct Rama temple.You declared a holiday on the birth anniversary of Prophet Mohammad, while you forgot to declare a holiday on 'Rama Navami'. The policy of appeasement struck you blind, the politics of votes polluted you. We will demolish such politics and construct the Rama temple.

Hindu brothers ! I call upon you to construct the temple of Rama on his place of birth. The sains have proclaimed to brighten up all the paths, make the enimities of Rama bite the dust, elect the Government of *Rama Bhaktis*. This movement of ours does not oppose any Muslims. Wherever I go, I say dear Muslim brothers live freely, live in harmony by mixing with us.....We have tolerated a lot but now the limits of tolerance have been crossed. THE GREAT WAR OF ELECTIONS IS APPROACHING AND HINDU SOCIETY HAS TO GET ORGANISED FOR ELECTING A GOVERNMENT OF RAM BHAKTAS SO THAT THE CHAMBERS OF PARLIAMENT MAY RESOUND WITH THE SLOGANS OF 'JAI SIA RAM'. Though you may belong to 'Congreess-I', or the defunct 'Congress', 'Lok Dal', 'Parlok Dal', Janta Dal (s) or Janta Dal (H), but you should feel proud of the Hindu blood in your veiw. Forget your party affiliations.....

The leaders whom we accepted, only played with the sentiments of countrymen an particularly with the Hindus. Muslims got a new country in the form of Pakistan. They got a special status while living in India, they got a Minorities Commission and the freedom to have religious education of their choice. They bother the least about family planning. They have also the freedom to marry five times and breed and multiply like flies and mosquitoes, producing thirty to thirty five children. The Hindus got the country with arms amputated, the grave risk in bringing out processions grave threats on the occasion of their celebrations of festivals, a ban on the expression of their views, and heavy axe on their beliefs.....Time has now come when the Hindu Society has to prepare for dislodging these power hungry wolves. I have come after visit in the States of Gujarat, M. P., Rajasthan, Bihar, Andhra Pradesh, Kerla and U. P. Nearly 3 lakh people waited for my arrival at Baroda in perspiring heat. This was not for any affiliation but was due to devotion to Lord Rama. This is the faith towards political Lord Rama. All Hindus of the country are determined to make the antegonist of Rama bite the dust and elect a Government of Ram Bhaktas.....I have only this appeal to make to you that this is the clarion call of the times. If you do not heed this call time will curse you. The generations to come, will be fettered in their feet and become slaves. So I request you to forget your patronage of near and dear and forget your castes. Elect a Government of *Rama Bhaktas*. Raise your hand with fists, roar like lions, raise the slogan in favour of Vir Shiva Ji and Rana Pratap. Say with pride we are Hindus and Hindustan belong to us.....

Referring to the aforementioned paragraphs in Annexure P-14/A, it is contended that an appeal was made to attempt to arouse the feelings of enmity and hatred between different classes of citizens on the ground of religion.

It is judicially recognised that the rival candidate may also belong to the same religion but a corrupt practice under Section 123 (3) can be committed by a candidate by appealing to the voters to vote for him on the ground of his religion. The issue of Ram Janam Bhumi Babri Masjid, it is alleged, became a political issue and according to the learned counsel for the petitioner formed the subject matter of controversy at election meetings for the 10th Lok Sabha elections. It indirectly and incidently induced considerations of religion.

In this background, while deciding the questions as to whether the allegations made, as such, amount to any corrupt practice within the meaning of Section 123 (3) or (3-A), in view of the ratio of the judgment in *Kultar Singh vs. Mukhtiar Singh* (AIR 1965 Supreme Court 141), care must be taken to consider the impugned speech or appeal and always in the light of relevant political controversy. Court should not be satute to read into the words used in the appeal anything more than what can be attributed to them on its fair and reasonable construction. The Court further held that the principles which have to be applied in construing such a document are well settled, namely, the document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. In reading such documents, it would be unrealistic to ignore the fact that when election meetings are held and the appeals are made by the candidates opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors, and the extravagance of expression in attacking one another are all a part of the game; and so, when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. In doing so, however, it would be unreasonable to ignore the question as to what the effect of the said speech or the pamphlet would be on the mind of the ordinary voter who attends such meetings and reads the pamphlets or hear the speeches. These principles in *Kultar Singh's* case were laid in the light of the effect of the returned candidate in that case having distributed and printed posters with the following contents :

“Dear resident Sikhs,

We, who are living in Singapore, Malaya, and South East Asia, place this before you, most respectfully, that at this critical juncture it is your duty to keep high the honour of the Panth. This is not the time to criticise the weaknesses of the leaders of the Panth; the need is that in the coming General Elections you should defeat the opponents of the Panth the same way as you did in the last Gurdwara Elections. Every Sikh vote should go to the representatives of the Akali Dal, and we hope that this prayer of ours from far off will be accepted by you and you will once again preserve the honour of the Panth. Victory of the Panth will maintain the honour of the Panth. By maintaining such honour we will reach our final goal, that is Panjabi Suba.”
The poster then end thus:—

“We remain anxious to keep the honour and prestige of the Panth ever high.

Yours,
Non-resident brothers”.

The Court in *Kultar Singh's* case held that the question for decision was not what the word Panth in the abstract may mean in the Punjab. The question would be as to what does the word Panth mean in the context of the pamphlet, the distribution which is alleged to constitute corrupt

practice. The Court observed that it was not concerned to consider the propriety, the reasonableness or the desirability of the claim for Punjabi Subha, which was a political issue and it is perfectly competent to the political parties to hold bonafide, divergent and conflicting views on such a political issue. In the light of the context of the pamphlet, the Supreme Court held that the appeal made to the voters for the glory and prestige of the Panth would not mean the glory and prestige of the sikh religion.

The context of the transcript of the speech of Sadhvi Ritambhara wherein the appeal is alleged to have been made by saying "I have only this appeal to make to you that this is the clarion call of the time. If you do not heed this call time will curse you. The generations to come will be flattered in their feet and become slaves. So I request you to forget your patronage of near and dear and forget your castes. Elect a "Government of Ram Bhagats" will neither amount to nor it would be possible to accept the submission that making of such a speech Sadhvi Ritambhara appealed to the voters because of the religion of respondent No. 1. Ram Bhagat used in the speech does not mean and refer to the religion of the returned candidate.

Reference may also be made to a later judgment in *Ebrahim Sulaiman Sai vs. M.C. Mohammed and another* (AIR 1980 Supreme Court 354). The election of the appellant in that case, who was a Muslim League candidate to the Lok Sabha from Kerala constituency was declared void on the ground that the speech made by him at an election meeting and directed against the members of the Muslim League (opposition) amounted to corrupt practice within the meaning of Section 123 (3A). The Supreme Court on appeal reversing the said decision of the Kerala High Court held by following the ratio in *Kultar Singh's case* (*supra*).

".....the speech sought to criticise the wrong policy of the Muslim League (opposition) in allying with parties that were allegedly responsible for atrocities against the Muslims and not just to emphasise the atrocities. In our opinion it cannot be said that the speech falls within the mischief of Section 123 (3A) of the Act,....."

The following passage from the judgment in *Kultar Singh's case* (*supra*) was quoted with approval:

"It is well known that there are several parties in this country which subscribe to different political and economic ideologies, but the membership of them is either confined to, or predominantly held by, members of particular communities or religions. So long as law does not prohibit the formation of such parties and in fact recognises them for the purpose of election and Parliamentary life, it would be necessary to a member that an appeal made by such candidates of such parties for votes may, if successful, lead to their election and in an indirect way, may conceivably be influenced by considerations of religion, race, caste, community or language. This infirmity cannot perhaps be avoided so long as parties are allowed to function and are recognised, though their composition may be predominantly based on membership of particular communities or religion".

Assuming the averments as made in sub-para (h) of para 19 (ii) of the petition on its face value to be correct, since defence of the returned candidate cannot be noticed at this stage and considering in that light the so called text of the speech of Sadhvi Ritambhara, even if the allegations remain un rebutted; in view of the two aforementioned decisions in : *Kultar Singh's case* and *Ebrahim Sulaiman's case* (*supra*) allegations do not amount to committing corrupt practice within the meaning under Section 123 (3) and (3-A) of the Act.

In addition to the above, one of the essential material fact in the light of the observations made in *Azhar Hussain's case (supra)*, the manner of giving so called consent by the candidate is missing. In *Azhar Hussain's case (supra)* in para 31, while dealing with the averments of giving consent, the Court observed :

“.....even a bare or bald averment is not made as to :

- (i) whom the returned candidate gave consent;
- (ii) in what manner and how; and
- (iii) when and in whose presence the consent was given

In the light of this, it was necessary for the petitioner to have in clear words alleged that when and in whose presence the consent for making such a speech was given by the returned candidate and in what manner and how the same was given. The question of verification of the contents of this sub-para of the petition as also the affidavit in support thereof wherein the same are stated to be true to his information without disclosing the source of information become relevant and important. In case, it is alleged that the speech was made by Sadhvi Ritambhara with the consent of the returned candidate, it is a part of essential and material fact to allege in what manner and how as also when in whose presence the consent was given. From whom and in what manner the petitioner became aware of the fact of the returned candidate having consented to the offending speech. The vague assertions made as regards consent cannot be made foundation of making allegation of commission of a corrupt practice.

The next allegation of corrupt practice is in sub-para (i) of para 19 (ii) that an organisation known as Bajrang Dal, which has cropped up after the issue of Ram Janam Bhumi Babri Masjid has its branch at Nadaun and during the election period, it published and circulated a poster (Annexure P-15) with the consent of the returned candidate and his election agent amongst voters and pasted it at different and conspicuous places by way of an appeal to the public not to vote to such person who does not respect Ram and Sita and who offends Hindutava. Since the petitioner being candidate of Congress-I which has faith in secularism, therefore, the voters were refrained from voting to the petitioner. There is no statement of fact made in this sub-para as to in what manner consent was given by respondent No. 1, to whom it was given, when it was given. The date, time and place of publication and circulation of poster is also not disclosed. Who were the persons, who got printed, published and circulated the poster. Since the poster read as a whole, on the face of it, does not make any reference to the returned candidate. In view of section 100 (1) (d)(ii), the allegations to the commission of corrupt practice by any person in the interest of the returned candidate, in the absence of further allegation that the result of the election in so far as it concerns the returned candidate has been materially effected will not make out a complete cause of action. Due to these defects, the allegations are incomplete and lack of material particulars.

Sub-para (i) of para 20 narrates that on 16th May, 1991 at about 8.00 P. M. at Village Baroti, a meeting was addressed by the returned candidate and Jagdev Chand, the Minister for Public Works and Transport to the Government of Himachal Pradesh, which was attended to by 50—60 persons. Jagdev Chand toeing the line of Bhartiya Janta Party and its allies such as Vishva Hindu Parishad and others exhorted the voters present that all members of the community should vote in favour of the returned candidate, who also belong to Rajput community, otherwise those Rajput voters who will not vote in favour of the returned candidate would be excommunicated from the Biradri. It is contended that the allegations make out a complete charge. The objection raised is about the total absence of material facts of the returned candidate's consent to Jagdev Chand making such a speech. Submission on behalf of the learned counsel for the petitioner is that since the averments in petition are that the returned candidate, who was sitting there did not object to the speech rather clapped and signalled to the audience, consent should be inferred from the circumstances.

This submission cannot be accepted in view of the exposition of law by the constitution Bench in *Charan Lal Shahu and Surinder Singh's cases (supra)*, which were relied upon in *Azhar Hussain's case (supra)*, saying that the consent is the life line to link up the candidate with the action of the other person, which may amount to corrupt practice, Unless it is specifically pleaded the charge for the action of others against the candidate cannot be made. In view of this position of law, there is no manner of doubt that the allegations do not amount to making out a complete charge.

It is alleged that on 16th May, 1991 at about 9.00 P. M. at village Bijhari, a meeting was addressed by Jagdev Chand, Public Works and Transport Minister in presence of the returned candidate. The tenor and wording of the same was verbatim the same as were stated in the meeting held at Baroti. These averments in sub-para (ii) of para 20 also, for the self same reasons, which are applicable for the averments as regards the meeting held at Baroti also lack material facts and thus disclosing no cause of action.

It is alleged that the returned candidate along with Jagdev Chand on 17th May, 1991 at Balduhak addressed a meeting attended by about 70 persons where the returned candidate and Jagdev Chand forcefully persuaded the persons to vote for the returned candidate, a member of the Rajput community and to refrain from voting in favour of the petitioner, a non-Rajput, otherwise the members of the Rajput community, not voting for the returned candidate would be ex-communicated from the Biradari. The material facts on considering the pleadings in sub-para(ii) of para 20 allege that appealing to the voters, even if it is by the candidate himself, to vote for him and refrain from voting in favour of the petitioner on the ground of caste are still lacking by not making a further statement of material fact that the same was for the furtherance of prospects of the election of the candidate or for prejudicially affecting the election of any candidate. It is a *sine-qua-non* to make out a complete charge by specifically pleading that such an appeal made was for the furtherance of the prospects of the returned candidate or for prejudicially affecting the election of the election petitioner.

In sub-para (iv) of para 20 basis for making out a charge of corrupt practice are the allegations that on 6th May, 1991, at Taunidevi at about 12.00 noon, the returned candidate along with Shanta Kumar, Chief Minister addressed a gathering of about 170-190 persons. The meeting started with the playing of speech recorded in the audio cassette of Sadhvi Ritambhra appealing to the voters to vote in favour of the returned candidate, and refrain from voting to the petitioner, on the basis of religion, since Bhartiya Janta Party and its candidate are the only saviours of the Hindu religion. As per the speech of Sadhvi Ritambhra, all the Hindu voters should vote in favour of Bhartiya Janta Party candidate, namely, respondent No. 1 and not in favour of the petitioner. It is further alleged that the returned candidate also addressed the gathering on the same ground and declared that Himachal being dominated by Hindu community, Bhartiya Janta party would win not only the Hamirpur seat but three other Parliament seats also. The returned candidate also appealed to the members of the Rajput community and Ex-servicemen to vote for him being a deserving candidate. In his address, the Chief Minister, Shanta Kumar told the line of Sadhvi Ritambhra.

Similar averments have been made in sub-para (v) of para 20 that on 13th May, 1991 at Daulatpur Chowk in Una District at about 7.00 P. M. a meeting was addressed by the returned candidate and Chief Minister Shanta Kumar attended by about 500-600 electors. Respondent No. 1 was the first to address the meeting and he declared that Una being contiguous to Punjab, it is special duty for Hindus to vote and support the Bhartiya Janta Party because Congress is responsible for the killing of Hindus in Punjab. Tape recorded speech of Sadhvi Ritambhra played thereafter strongly persuaded the voters to vote for the Bhartiya Janta Party candidate in order to save Hinduism in the country and to refrain from voting for such parties who propagate secularism and have sympathy for other religion. Chief Minister Shanta Kumar also addressed the meeting saying that the Bhartiya Janta Party Government has done more for Hindus in just a spell of one year

than the Congress-I Government. It is alleged that Shanta Kumar endorsed the recorded speech of Sadhvi Ritambhara by saying that it has become the bounden duty of Hindus to vote for Bhartiya Janta Party so that Hindu and Hinduism is saved, and appealed to the voters to see that saffron flag is hoisted in the Parliament House instead of Tri-colour. This act on the part of the returned candidate and Shanta Kumar with the consent and in connivance of respondent No. 1 amounts to corrupt practice.

The next two sub-para's of para 20, namely, (vi) and (vii) also make similar allegations that a meeting was organised on 6th May, 1991 by the Bhartiya Janta Party at Kandaur addressed by Chief Minister Shanta Kumar, the returned candidate and Sada Ram Thakur, M. L. A. of Bilaspur attended by about 350-400 electors. The three of them in their address appealed to the voters on the same line as stated in the preceding paragraphs.

At Pir Saluhi, on 5th May, 1991 a meeting was organised by the Bhartiya Janta Party at about 5.00 P. M. attended by 60-70 electors. The returned candidate and Virender Kumar, a Bhartiya Janta Party M. L. A. addressed the meeting, repeating the contents of speech as reproduced in the preceding para. The returned candidate addressed the electors, "Jo Hindu Bhartiya Janta Party Ko Vote Dega, Veh Ram Ki Aulad Hai, Jo Kangress Ko Vote Dega Veh Babar Ki Aulad Hai". It is alleged that by this address the candidate is guilty of promoting feelings of enmity and hatred between Hindus and Muslims on the ground of religion.

By making reference to the allegations in the aforementioned sub-paragraphs, the learned counsel for the petitioner submitted that the facts alleged do constitute pleading of charges of corrupt practice. In case, there is any objection as regards lack of a few better particulars, the same can be supplied on respondent No. 1 praying for the same, but the allegations as made cannot be brushed aside at this stage, when evidence has yet to be led and during the course of evidence, the charge will be proved. Learned counsel for respondent No. 1 contended that in the absence of material facts, which are required to be pleaded the grounds which lack in material facts have to be ignored from consideration and the same cannot be made subject matter of an issue in a trial of an election petition.

Dealing with the submissions as also the allegations made in sub-para's (iv) to (vii) of para 20, what requires to be ascertained is as to whether all essential material facts are stated so that the petition may be set down for trial. In none of these sub-para's, there is any averment of fact that the so called appeal was made for the furtherance of the prospects of the election of the candidate or for prejudicially affecting the election of any candidate. It is also not that the averment in any part of these sub-para's that the result of the election in so far as it concerns the returned candidate has been materially affected. In sub-para (iv), (v) and (vi), there is a reference of the playing of the tape recorded speeches of Sadhvi Ritambhara. Speeches are alleged to have been delivered by the returned candidate and Chief Minister Shanta Kumar at Taunidevi, Daulatpur Chowk and Kandaur on 5th May, 1991, 13th May, 1991 and 6th May, 1991, respectively. It is also alleged that both respondent No. 1 and Shanta Kumar toed in the line of the speech of Sadhvi Ritambhara and made an appeal to the voters.

In case, a reference has been made to the tape recorded speech of Sadhvi Ritambhara, in the absence of quoting the speech, alleged to have been made or alleged to have been played, it can safely be said that the material fact is not stated. The objection of the learned counsel for respondent No. 1, while making submissions under Issue No. 4 and Issue No. 1 was that the cassettes relied upon have neither been filed nor copies supplied to the respondents. While deciding those issues, it has been held that since cassettes have not been produced in the Court along with petition, non-production thereof will not affect the maintainability of the petition, but the effect of non-production has to be seen in case the cassettes become an integral part of the petition.

In view of the allegations made in the three sub-para's aforementioned, wherein reliance is placed on the speech of Sadhvi Ritambhara in support of the allegation of corrupt practice of appealing to the voters on the ground of religion, the speech being a part of

the pleading, non-filing of the cassettes and non-supply thereof to the respondents as also not quoting verbatim the speech or its extract, there will be incomplete allegations in support of the charge of corrupt practice. Pleadings thus being deficient to that extent will not be looked into. Excluding the averments as regards the speech of Sadhvi Ritambhara, alleged to have been played, the facts pleaded which remain are the addresses of Shanta Kumar, Chief and those of respondent No. 1. It is pleaded that Shanta Kumar toed in the line of the speech of Sadhvi Ritambhara and affirming the same, appealed to the voters on the ground of religion. In the absence of exact nature and contents of speech, the manner in which the electors were appealed on the ground of religion, the allegations will be incomplete. There is no allegation that appeal was on the ground of candidate's religion. In view of the principles laid down in *Nihal Singh's* and *Azhar Hussain's* cases (*supra*) that the pleadings in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of meeting of which essential and material particulars are not given would tantamount to failure to incorporate the material facts and that in as much as that witnesses could be procured to the context of meeting, of the nature of speech for adducing evidence, which in fact is absolutely prohibited. Speech of Sadhvi Ritambhara is not the speech for which Annexure P-14 is the transcript since such speech is alleged to have been made on 16th May, 1991, whereas allegations in four sub-para's are relate-able to anterior dates. Averments to the speech of Sadhvi Ritambhara being an essential part of pleading, upon which is dependant the appeal alleged to have been made either by the candidate or the other persons including Chief Minister Shanta Kumar, without actually quoting the said speech or essential portion thereof, the averments suffer from lack of material facts and, as such, the pleadings are wholly deficient and disclosing no cause of action.

The allegations made in para 21 are of a general nature and have a reference to the previous two paragraphs, namely, paras 19 and 20, by pleading that the effect of the aforementioned allegation was that several votes of the constituency, on the ground of promotion of feelings of enmity and hatred between different classes of citizens on the ground of religion and on account of appeal on the ground of caste and religion vote for the returned candidate and refrained from voting in favour of the petitioner. It had the effect of furthering the prospects of the returned candidate and prejudicially affecting the election of the petitioner. It had also the effect of promoting and attempting to promote feelings of enmity and hatred. Names of 56 persons from various parts of Districts Hamirpur, Bilaspur and Una have been mentioned stating that these persons had voted in favour of respondent No. 1 and did not vote for the petitioner.

On a bare reading of this para, it can be inferred that the petitioner has merely reproduced verbatim sub-section (3) and (3-A) of section 123 without further explaining or alleging as to in what manner the so called appeal had the affect of furthering of the prospects of election of the returned candidate or prejudicially affecting the election of the petitioner. The petitioner is also not clear or categorical in this stand as to whether there was actual promotion or attempt to promote feelings of enmity and hatred. In sub-section (3-A), (a) promoting of, or (b) attempting to promote are the two different heads of corrupt practice. Averment has to be specific without being vague in any manner so as to give the opposite party a chance to meet the same specifically. Charge of corrupt practice in an election trial is of a quasi-criminal nature and has to be specifically alleged. The allegations made in para 21, in isolation cannot be made applicable to each and every sub-para of para 19 (ii) and 20 of the petition, every allegation made in various sub-para's in itself is a separate allegation of corrupt practice and with respect to each sub-para or allegation made therein, the material facts are required to be pleaded. In the opening part of para 19 and in para 21 by making allegations of a general nature, the same cannot be made applicable in each and every sub-para, since nature of each allegation is separate and distinct. What would be a material fact for a particular corrupt practice under the provisions of the Act for declaring the election void is dependant upon the facts and circumstances as also the nature of each case and surrounding circumstances.

Having considered the entire petition, on the whole an impression is gathered that there must be some cause of action disclosed for taking the petition for trial on merits, but on a close scrutiny, the entire petition discloses no cause of action. It suffers from lack of material facts and the cause of action pleaded is totally incomplete with respect to the various rounds. No doubt, an election

petition normally deserves to be and should be tried on merits, provided it discloses cause of action, but when on a closer scrutiny, material facts of the alleged corrupt practice(s) are not furnished and it does not disclose any cause of action, the other allegations in the absence of complete cause of action, pleaded may be of a serious nature, it must be dismissed *in limine*. The approach of the Court, while dealing with a petition questioning the election of the returned candidate should be as noticed in *Azhar Hussain's case (supra)*.

"In a democratic polity 'election' is the mechanism devised to mirror the true wishes and the will of the people in the pattern of choosing their political managers and their representatives who are supposed to echo their views and represent there interest in the legislature. The results of the Election are subject to judicial scrutiny and control only with an eye on two ends. First, to ascertain that the 'true' will of the people is reflected in the results and second, to secure that only the persons who are eligible and qualified under the Constitution obtain the representation. In order that the 'true will' is ascertained the Courts will step into protect and safeguard the purity of Elections, for, if corrupt practices have influenced the result, or the electorate has been a victim of fraud or deception or compulsion on any essential matter, the will of the people as recorded in their votes is not the 'free' and 'true' will exercised intelligently by deliberate choice. It is not the will of the people in the true sense at all. And the Courts would, therefore, it stands to reason, the justified in setting aside the election in accordance with law if the corrupt practices are established. So also when the essential qualifications for eligibility demanded by the constitutional requirements are not fulfilled, the fact that the successful candidate is the true choice of the people is a consideration which is totally irrelevant notwithstanding the fact that it would be virtually impossible to re-enact the elections and reascertain the wishes of the people at the fresh elections the time scenario having changed. And also notwithstanding the fact that elections involve considerable expenditure of public revenue (not to speak of private funds) and result in loss of public time, and accordingly there would be good reason for not setting at naught the election which reflects the true will of the people lightly. In matters of election the will of the people must prevail and Courts would be understandably extremely slow to set at naught the will of the people truly and freely exercised. If Courts were to do otherwise, the Courts would be pitting their will against the will of the people, or countermanding the choice of the people without any object, aim or purpose. But where corrupt practices are established the result of the election does not echo the true voice of the people. The Courts would not then be deterred by the aforesaid considerations which in the corruption scenario lose relevance. Such would be the approach of the Court in an election matter where corrupt practices is established. But what should happen when the material facts and particulars of the alleged corrupt practices are not furnished and the petition does not disclose a cause of action which the returned candidate can under law be called upon to answer? The High Court has given the answer that it must be summarily dismissed."

No other point was urged or agitated.

In the result, as per above discussions, while answering Issues No. 2 and 3 in affirmative, the Election Petition is liable to be dismissed as disclosing no triable cause of action. Having come to this conclusion, the appropriate Order which deserves to be passed in this case is not the dismissal of petition as such, but rejection thereof within the ambit of Order 7 Rule 11 of the Code.

Consequently, the petition is rejected. The petitioner shall pay the costs to respondent No.1, quantified at Rs. 5,000/-.

Sd/-
DEVINDER GUPTA,
(Judge)

11th December, 1992.
(misra/tr).